

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 262

SOUTH CHICAGO COAL & DOCK COMPANY AND
LONDON GUARANTEE & ACCIDENT COMPANY,
LTD., PETITIONERS,

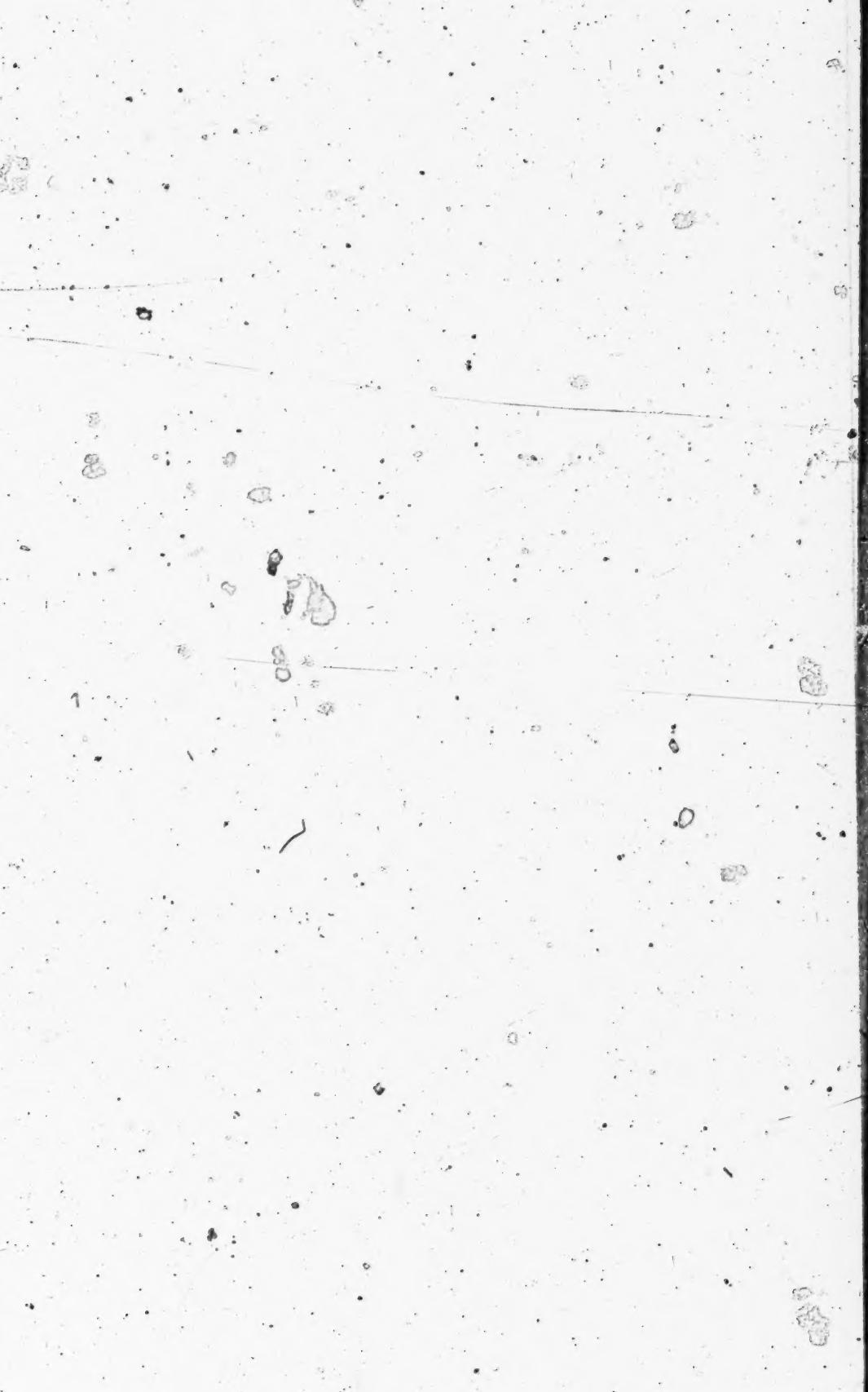
vs.

HARRY W. BASSETT, DEPUTY COMMISSIONER,
UNITED STATES EMPLOYEES' COMPENSATION
COMMISSION, 10TH COMPENSATION DISTRICT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 4, 1939.

CERTIORARI GRANTED OCTOBER 9, 1939.



IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1938.

No. _____

SOUTH CHICAGO COAL & DOCK COMPANY, AN
ILLINOIS CORPORATION, AND LONDON GUARANTEE
AND ACCIDENT COMPANY, LTD.,

Petitioners,

vs.

HARRY W. BASSETT, DEPUTY COMMISSIONER OF UNITED
STATES EMPLOYEES' COMPENSATION COMMISSION, TENTH
COMPENSATION DISTRICT,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT:



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TRANSCRIPT OF RECORD

IN THE

**United States Circuit Court of Appeals
For the Seventh Circuit**

No. 6808

SOUTH CHICAGO COAL & DOCK COMPANY, AN
ILLINOIS CORPORATION, AND LONDON GUARANTEE
AND ACCIDENT COMPANY, LTD.,

Plaintiffs-Appellees,

vs.

HARRY W. BASSETT, DEPUTY COMMISSIONER OF UNITED
STATES EMPLOYEES COMPENSATION COMMISSION, TENTH
COMPENSATION DISTRICT,

Defendant-Appellant.

Counsel for Plaintiffs-Appellees:
MR. ROBERT J. FOLONIE.

Counsel for Defendant-Appellant:
MR. WILLIAM J. CAMPBELL,
U. S. C. O. A. 7

FILED

DEC 28 1938

FREDERICK G. CAMPBELL
CLERK

Appeal from the District Court of the United States for the Northern District
of Illinois, Eastern Division.

TRANSCRIPT OF RECORD FILED NOV. 14, 1938.
PRINTED RECORD.

46

IN THE
**United States Circuit Court of Appeals
For the Seventh Circuit**

No. 6808

**SOUTH CHICAGO COAL & DOCK COMPANY, AN
ILLINOIS CORPORATION, AND LONDON GUARANTEE
AND ACCIDENT COMPANY, LTD.,**

Plaintiffs-Appellees,

vs.

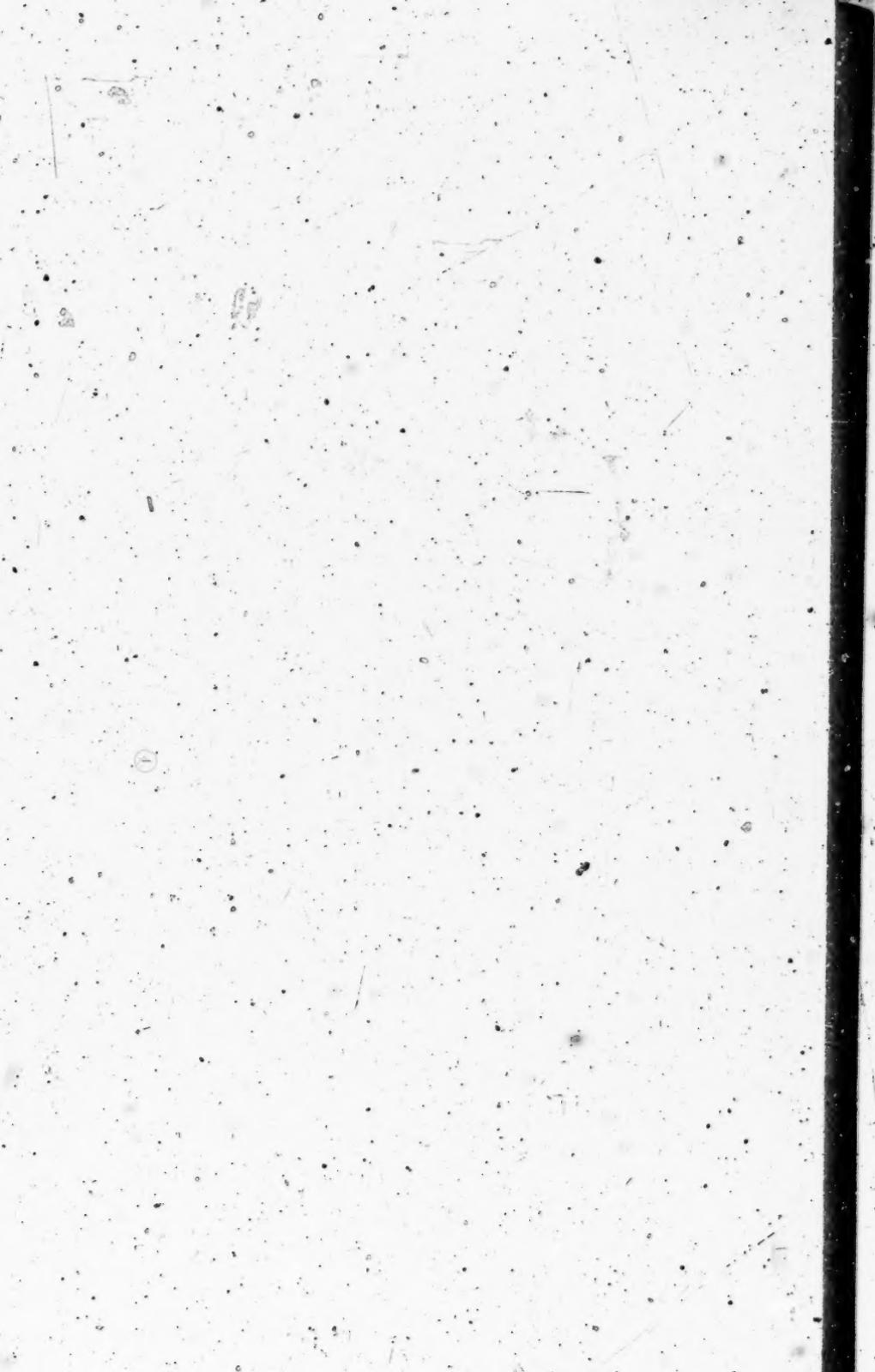
**HARRY W. BASSETT, DEPUTY COMMISSIONER OF UNITED
STATES EMPLOYEES COMPENSATION COMMISSION, TENTH
COMPENSATION DISTRICT,**

Defendant-Appellant.

Counsel for Plaintiffs-Appellees:
MR. ROBERT J. FOLONIE,

Counsel for Defendant-Appellant:
MR. WILLIAM J. CAMPBELL,

**Appeal from the District Court of the United States for the Northern District
of Illinois, Eastern Division.**



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1 Pleas in the District Court of the United States for ~~Placita.~~
the Northern District of Illinois, Eastern Division, be-
gun and held at the United States Court Room, in the City
of Chicago, in said District and Division, before the Honorable
Philip L. Sullivan, District Judge of the United States
for the Northern District of Illinois on the eighth day of
July, in the year of our Lord one thousand nine hundred
and thirty-eight, being one of the days of the regular July
Term of said Court, begun Monday, the fourth day of July,
and of our Independence the one hundred sixty-third year.

Present:

Honorable Philip L. Sullivan, District Judge.

William H. McDonnell, U. S. Marshal.

Henry W. Freeman, Clerk.

*Bill for Injunction.*Filed 2
Mar. 3,
1938.

IN THE DISTRICT COURT OF THE UNITED STATES

Northern District of Illinois,

Eastern Division.

South Chicago Coal & Dock Company,
an Illinois corporation, and London
Guarantee and Accident Company,
Ltd.,

vs.

Harry W. Bassett, Deputy Commis-
sioner of United States Employees'
Compensation Commission, Tenth
Compensation District.

No. 15968.

Be It Remembered, that the above-entitled action was commenced by the filing of the following Bill of Complaint with exhibits attached thereto, in the above-entitled cause in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Divi-
sion, on this the third day of March, 1938.

3 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—15968) • •

BILL FOR INJUNCTION.

First: The South Chicago Coal & Dock Company, an Illinois corporation, and London Guarantee and Accident Company, Ltd., a corporation of the Kingdom of Great Britain, and licensed and doing business in the State of Illinois, both of said plaintiffs doing business in, and residing in, Chicago, Illinois, complain of defendant, Harry W. Bassett, who is Deputy Commissioner of the United States Employees' Compensation Commission, Tenth Compensation District, a citizen of Illinois, and residing at Chicago, in said State.

Second: The jurisdiction of this court depends upon the power of this court through injunction, provided by the Longshoremen's and Harbor Workers' Compensation Act (44 Statutes 1424, United States Code Annotated, Title 33—1937 Cumulative Annual Pocket Part, Chapter 18, Section 921), and the ground of the court's jurisdiction under such statute rest in the fact that a compensation order was made

by the said Deputy Commissioner, purporting to act
4 under said Act, and ought to be suspended and set aside, because John Schumann came to his death in course of employment of first named plaintiff, which death occurred in Calumet River in the County of Cook and State of Illinois, and his death is not within the coverage of said Act, but was the death of a member of the crew of a vessel; and because the finding that his death occurred while she was moored is without support of any evidence before said Deputy Commissioner; and the finding that he and plaintiffs were persons comprehended within the terms of said Act, and not excepted therefrom, is without the support of any evidence, and contrary thereto.

Third: The plaintiff, South Chicago Coal & Dock Company was the employer of John Schumann, and operated a steam vessel propelled by its own steam power. The said vessel is called the "Koal Kraft", which vessel was of a tonnage of approximately 312 net tons, and about 159 feet in length, and 37 feet broad, and 10 feet draft. Said plaintiff was engaged in fueling vessels through medium of said vessel.

The other plaintiff, London Guarantee and Accident Company, Ltd., was the insurance carrier, insuring liability of said other defendant which might be imposed upon it under Longshoremen's and Harbor Workers' Compensation Act upon any of its employees.

John Schumann came to his death on October 31, 1937, by drowning in Calumet River in this judicial district, while employed on said vessel as a deckhand and one of the crew of said vessel, consisting of five persons, of whom he was one, constituting the crew operating said vessel in Calumet

5 River and Calumet Harbor and Indiana Harbor, and confining its operations within the navigable waters of the United States in the state of Indiana and Illinois. Said South Chicago Coal & Dock Company is hereinafter called "employer" and said London Guarantee and Accident Company, Ltd. is hereinafter called "insurance company".

Employer received notice of the death of John Schumann, which occurred on October 31, 1937 by drowning, this drowning occurring by his being lost from said vessel while navigating the Calumet River. A claim for compensation was filed with United States Employees' Compensation Commission in the office of Deputy Commissioner, Harry W. Bassett, a copy of which claim for compensation is hereto attached and marked "Exhibit A."

Answer was filed by plaintiffs, wherein it was alleged:

Bill for Injunction.

"It is denied that both the employer and employe was subject to the Longshoremen's and Harbor Workers' Compensation Act at the time of the alleged injury." After filing of said answer, hearing was had and evidence produced, and true, full and correct transcript of which is hereto attached and marked "Exhibit B", and made a part hereof by reference.

Findings of fact and award were entered by the said Deputy Commissioner on February 21st 1938, copy of which is hereto attached and marked "Exhibit C", and made a part hereof by reference.

John Schumann was a deckhand and a member of the crew of said vessel, performing customary duties of a deckhand, with particular duties in caring for making lines fast, loosing same, keeping vessel clean and performing other duties incident to fueling vessels. By the laws and regulations of the Government of the United States, employer was required to have a crew, of which said deceased was one, and regulations were imposed by regulations of Vessel Inspectors, requiring a crew not less than 5 persons to man such vessel. There was no evidence before Deputy Commissioner, and it is not a fact, that John Schumann was a labore~~r~~ but, in truth and in fact, he was a member of the crew of said vessel and a deckhand and a seaman.

The death of John Schumann occurred while the vessel was navigating the waters of the United States, namely, Calumet Harbor and River, and not while she was moored, and there was no evidence before the Deputy Commissioner warranting the defendant in finding that she was moored at the time of his death.

Deceased was one of the crew of said vessel, employed in her navigation as a deckhand, and his services were necessary to her navigation.

Mary Schumann is insolvent and a person of no financial means, having no property of any kind and supported by her parents and not employed in any gainful work, and if the plaintiff should pay to her or for her the sums awarded to her, they could not be recovered back; and said Jeanette Schumann is an infant, having no financial means and insolvent, and if payments were made to said Mary Schumann for her, it could not be recovered back from either of them.

The other payments prescribed to the said Brown Funeral Home for funeral expense, and the said Samuel J. Spiegel, as attorney's fee, are amounts to be paid for and on behalf of and for benefit of the said widow and child so previously named, and said amounts, if paid, could not be recovered back by the plaintiffs, and plaintiffs

would be irreparably injured and would lose entirely the amounts awarded for payment to said widow, child, funeral home and lawyer, as in the award of the Deputy Commissioner prescribed and directed. Plaintiffs attach here-to as "Exhibit D" the affidavit of William F. Shean to be presented on motion for interlocutory injunction.

Fifth: Plaintiffs pray that said compensation order, and each part of said order directing payments to divers persons, may be set aside, and that findings may be set aside that John Schumann was a laborer, and finding that death occurred while said vessel was moored, and finding that John Schumann and the plaintiffs were persons comprehended within the terms of said Act; that, being contrary to and not supported by the evidence, upon final decree the compensation order may be set aside and the same, and its enforcement, be permanently enjoined and restrained; that, in addition, said compensation order may be suspended and that an order be entered for an interlocutory injunction suspending the same during the pendency of this suit; that payments required by said award, and each of them, be stayed pending final decision; and that this court may find and adjudge that the said employment of John Schumann was as the member of a crew of the vessel "Koal Kraft"; that said claim is not within the compensation provisions of Longshoremen's and Harbor Workers' Compensation Act; and that plaintiffs should not be, nor is either of them, subject to, or liable to, pay compensation because of the death of John Schumann; and that the
8 said claim for death is not within the jurisdiction or power of the defendant to administer or apply as against either plaintiff.

South Chicago Coal & Dock Company,
London Guarantee and Accident Com-
pany, Ltd.,

By Robert J. Folonie,

Their Solicitor.

Robert J. Folonie,
Solicitor for Plaintiffs.

Address:

105 West Adams Street,
Chicago, Illinois.

Exhibit A.

**State of Illinois, } ss.
County of Cook. }**

John E. Wilson, being duly sworn, upon his oath says: I am agent for the plaintiffs in this behalf and have had charge of the matters therein recited on behalf of plaintiffs and familiar with the facts. I have read the above and foregoing Bill of Complaint, and the same and the matters and things therein contained are true in substance and in fact.

John E. Wilson.

Subscribed and sworn to before me this 3rd day of March, A. D. 1938.

(Seal)

Lillian Preiss,
Notary Public.

9

EXHIBIT A.

(Stamp) Received Nov. 10, 1937 District No. 10.

United States Employees' Compensation Commission
Office of Deputy Commissioner Harry W. Bassett
Administering Longshoremen's and Harbor Workers'
Compensation Act

Leave This Space Blank

Case No. 468-1

Insurance

Carrier's No. 25

**Claim For Compensation In Death Case By Widow and/or
Children Under The Age Of Eighteen**

- 1 I hereby make claim for compensation arising out of
2 the death of John Schumann who died on Oct. 31, 1937
3 at Chicago, Illinois, as a result of injury sustained on
4 Oct. 31st, 1937, at 97th St. & Calumet River on Koal
(Place where injury happened and name of vessel)
- 5 Kraft Barge in the employ of South Chicago Coal &
(Name of employer)
- 6 Dock Company whose address is 160 N. La Salle St., Chi-
(Street and Number)
- 7 cago, Ill. Cook Deceased left the following children who
(City or town) (County)
were under 18 years of age at the time of his death:

Exhibit A.

7

Received Nov 10 1937 District No 10

Names	Date of Birth
Jeanette Schumann	August 7, 1936

These questions should be answered where the widow is claiming compensation

8 Widow was born on April 28, 1909 at Chicago, Illinois
(Date) (Place)

9 Widow was married to the deceased on 14th day of
10 July, 1934 at Chicago by City Hall
(Place where married)

(Name or title of person performing ceremony)

11 Last physician or hospital _____
(Name and address)

12 Name of undertaker Brown Funeral Home Address 95th
& Commercial, Chicago

13 Amount of undertaker's bill, \$462.50 Amount paid, if
any, \$ none

14 By whom paid _____
(Name) (Address)

Dated this 9th day of November, 1937

(Signed) Mary Schumann
(Signature of claimant)

Address 10023 Avenue N, Chicago, Ill.

Affidavit

State of Illinois, } ss.
County of Cook. }

On this 9th day of November, 1937 personally appeared before me the above-named Mary Schumann and made oath that the answers by her above named and subscribed, are true.

(Signed) Marion Fahse,
Notary Public.
Address 127 N. Dearborn St., Chicago, Ill.

(Seal)

10

EXHIBIT B.

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11. United States Employees' Compensation Commission.

Before Harry W. Bassett, Deputy Commissioner

Tenth Compensation District, Chicago, Illinois.

Case No. 468-1.

John Schumann, Deceased,
Claimant,

vs.

South Chicago Coal & Dock Com-
pany, *Employer,*

London Guaranty & Accident Com-
pany, *Insurance Carrier.*

Transcript of
Testimony at
Hearing.

Pursuant to notice, this matter was hearing before Harry W. Bassett, Deputy Commissioner, United States Employees' Compensation Commission, at Chicago, Illinois, on the 27th day of January, 1938.

Appearances:

Samuel J. Spiegel, Esq., For the Claimant.

John E. Wilson, Esq., and T. F. Clinton, Esq., For the Insurance Carrier.

12. Deputy Commissioner Bassett: Now, for the record, it is John Schumann, deceased, isn't it?

Mr. Wilson: Yes.

Deputy Commissioner Bassett: And the South Chicago Coal & Dock Company is the employer and the London Guaranty & Accident Company is the carrier.

Mr. Wilson: Yes, sir.

Deputy Commissioner Bassett: And the claimant lived at 10023 Avenue N, Chicago?

Mr. Spiegel: That is correct.

Deputy Commissioner Bassett: And the name of the barge was the Koalkraft?

Mr. Wilson: That is right.

Deputy Commissioner Bassett: And the deceased met his death on or about October 21, 1937?

Mr. Wilson: That is correct.

Deputy Commissioner Bassett: Mr. Wilson, in your U. S. 215, in answer to question 1 you deny that the applicant sustained an injury on or about the date set forth in the application?

Mr. Wilson: Well, the reason we did that was because there was no definite information as to how he met his death. I have no way now of telling.

Deputy Commissioner Bassett: Do you want to answer it any differently now?

Mr. Wilson: Well, I do not see how I can change 13 my position, Mr. Commissioner, because I have no way of determining it.

Deputy Commissioner Bassett: In answer to question 2, you still hold that the employer and the employe were not subject to the Longshoremen's and Harbor Workers' Compensation Act?

Mr. Wilson: Yes.

Deputy Commissioner Bassett: And in answer to the third question you admit that the relationship of employer and employe existed at the time of the injury or death?

Mr. Wilson: By that I mean he was working then on this boat.

Deputy Commissioner Bassett: Yes. And in answer to the fourth question, you deny that at the time of the alleged injury, the employe was performing services growing out of and incidental to his employment.

Mr. Wilson: Well, the situation there is the same as it is in regard to question No. 1. I do not know what he was doing. He was on that boat and that is all I know.

Deputy Commissioner Bassett: Well, of course, if he was on the boat he would be in his employment. He would be there. Under our Act you would not have to show any negligence, and so forth. I merely want your answers in the record.

Mr. Wilson: Well, the thing I am principally interested in here is whether or not he came within the Act.

Deputy Commissioner Bassett: Well, that is what we want to bring out if we can.

Mr. Wilson: Yes, and I do not want to make any admissions that will put me in the position where I admit that.

Deputy Commissioner Bassett: Well, I do not think that would put you in that position. It is just merely a

question. I do not think it would put you in that position, under the law.

Mr. Wilson: Yes. That is the reason for my denial, that I do not want to admit it.

Deputy Commissioner Bassett: You still withhold an answer on regard to that.

Mr. Wilson: I think I had better do so.

Deputy Commissioner Bassett: In answer to question 6 you admit, of course, that the applicant was killed?

Mr. Wilson: Yes.

Deputy Commissioner Bassett: And the next question, No. 7, there is no answer there.

Mr. Wilson: There was no temporary disability.

Deputy Commissioner Bassett: No. And in answer to question 8—that is in regard to wages.

Mr. Wilson: There was none set forth.

Deputy Commissioner Bassett: Well, you were paying him something, weren't you? What were his wages?

15 Mr. Wilson: I can get that for you.

Deputy Commissioner Bassett: Well, be sure and get it before you leave.

Mr. Wilson: Oh, we have the records with us. We will find that out for you.

Deputy Commissioner Bassett: Yes. I want it in the record, that's all.

Mr. Wilson: Yes. We will find out for you. I think he was paid by the hour, but I am not certain.

Deputy Commissioner Bassett: I think we may as well go ahead now.

Mr. Spiegel: Before we proceed, I wish to enter a written authority by Mrs. Schumann to represent her as required by the Longshoremen's and Harbor Worker's Compensation Act. It is in writing.

Deputy Commissioner Bassett: All right. It may be filed with the record as Exhibit 1.

(Said document was marked Exhibit 1, and is attached hereto)

Mr. Wilson: Well, I haven't done that, but my appearance is in.

Deputy Commissioner Bassett: That is all right.

Mr. Sachs: Now, I also want to submit to the Commissioner that under Section 20, we come here with the following presumptions and I want to avail myself of them:

16 The first presumption, that the claim comes within the provisions of this Act and therefore, as a result

of this provision, the burden will be upon them to proceed with the evidence and overcome this presumption.

Mr. Wilson: I do not think that is the rule of law, is it, Mr. Commissioner?

Deputy Commissioner Bassett: I do not see as it makes any difference myself. After I hear all the evidence I will decide as to whether I think the case comes under it in any way and then you have the right to appeal, and all that.

Mr. Wilson: There is no such thing, then, as a directed verdict in these hearings, is there?

Deputy Commissioner Bassett: No. I will decide as to that part, whether the case comes under the Act or not.

Mr. Wilson: Well, the point I mean is, do these witnesses that are produced, is the presumption so strong that I must produce witnesses to overcome it? That is what I mean.

Deputy Commissioner Bassett: No. As I say, what he has said about that would not make any difference to me at all. All I want is the evidence here to find out in my own mind whether he was a member of the crew or not.

Mr. Wilson: Well, that is exactly what I am getting at. Now, does he produce witnesses to prove that or must I produce them?

Deputy Commissioner Bassett: I think the evidence either way would be all right. That is all I want.

17 Mr. Spiegel: Mr. Commissioner, I am making this statement at this time, not because of anything, but because of the interest in the widow here, I am here to take advantage in every way that I can for her. This Act, as I have read it, and I have read it carefully, is primarily for the protection of the claimant in this particular case. There are many special privileges given under this Act to the claimant that are in no other place in legal proceedings. There are so many starting points in favor of the claimant given by this Act that the Congress, in its wisdom, deemed necessary to give, her that it would be a lack of duty on my part if I did not impress on the Commission she should be given advantages that are provided for her. It is true the final award is made by the Commission on the question but there are points that are in her favor and I would very much want these privileges taken into account and consideration given to them.

Now, this presumption about a claim coming within this provision of the Act, why did the Act provide for it? It is for the purpose of putting them on notice and they have to produce witnesses to overcome it. As a matter of fact,

I have nothing to do here. I have to come in rebuttal. They have to show why my man, who was working on their boat, does not come under this Act? The Act itself, 18 the fact of the filing of the claim under this provision, puts them to work. They have to overcome it. So, Mr. Wilson is right in his understanding of it that they have to overcome a legal presumption that the claim comes within the provision of this Act. You know, Mr. Commissioner, that is given almost a French aspect of the law. It is not the plaintiff who comes into the Court who has the burden of proof here; it is the opposite. The defendant has the burden of proof. They have to prove to you that Mr. Schumann is not entitled to all the privileges and payments under this Act.

Deputy Commissioner Bassett: You mean they have to? That is what they are going to try to do, they are going to try to claim he does not come under this Act.

Mr. Wilson: That is right.

Mr. Spiegel: I am presenting only one point. They have to overcome the legal presumption.

Now, we have another legal presumption. We have the presumption of notice. We have the presumption that the injury was not occasioned by drink, by intoxication of the injured person.

Now, Mr. Commissioner, you know this Act excludes certain claims. There is an exception in this Act that if the man died because of some wilful act of somebody else, then he does not come under the Act, but there is a presumption that he did not. So that while I am here presenting 19 the first point, I maintain that there are other protections right along I want to claim that each and every protection in favor of my client should be taken into account.

Now, at this stage of the game we come to the first presumption, namely, that the claim comes under the Act. I have nothing to do here. Let them overcome it. Is that not correct, Mr. Commissioner?

Deputy Commissioner Bassett: I am only here to hear the evidence and I hope you will both present all the evidence you can for me to decide the case on. I am here only to carry out the Act. And if he comes under the Act, I will be glad. I will say that to both of you.

Mr. Clinton: We are here to give you every aid we can in determining the point, your Honor. We are not here to withhold anything that you want.

Mr. Wilson: No. The only think I want to know is the method of procedure.

Deputy Commissioner Bassett: You may be as free as you want to be with your evidence. In fact, the more evidence on the subject, the better I like it, because I would like to have all of the evidence.

Mr. Wilson: Well, the only thing I was trying to find out is where the burden of proof is. But, we will proceed and when we get to that point, to the point where I think I should find out, I will step in and inquire.

20 Mr. Spiegel: When they have introduced their evidence, if I find I should need some evidence and I haven't got enough here, I will ask the Commissioner to bear with me so that I can produce evidence to overcome any evidence they offer.

Deputy Commissioner Bassett: We can continue the case until the time you can get such evidence as you think is proper.

ARTHUR J. SPOTTON, was sworn and testified as follows:

Direct Examination.

Q. (By Mr. Wilson.) What is your name?

A. Arthur J. Spotton.

Q. What is your address, Captain?

A. 6311 Greenwood.

Q. What is your profession, business or occupation?

A. Boat Captain.

Q. On or about October 31, 1937, by whom were you employed?

A. South Chicago Coal & Dock Company.

Q. And you were employed by them as what?

A. Captain of the freighter Koalkraft.

Q. And you spell that K-o a-l-k-r-a-f-t?

A. Yes, sir.

Q. Where was this Koalkraft boat, or whatever you call it, used, Captain?

A. It was used as a fuel lighter for fueling steam-boats and other marine equipment.

21 Q. Where is the regular course of the operation? That is, where does it operate?

A. It is licensed to operate in the Calumet River and Harbor and operate in the Indiana Harbor and River.

Q. How long have you been in this line of work, Captain?

A. In this line of work twelve years.

Q. Altogether?

A. No, in the marine business I have been in it since 1900.

Q. How much of this time have you spent in and around Chicago and Calumet City and in the immediate vicinity of the Lakes and Calumet River and other streams here?

A. Fourteen years.

Q. How long have you had this particular job with this particular boat, Captain?

A. Twelve years.

Q. Now, from your past experience, Captain, are you well enough acquainted with the system of streams and waters around the City of Chicago to tell us whether or not the Calumet River and Lake are considered to be navigable streams?

A. Yes, sir.

Q. Are they?

A. Yes, sir.

Q. Now, under whose jurisdiction are they, as far as you know, as far as your experience touches?

A. Federal.

22 Q. Federal jurisdiction. Now, Captain, can you give us the size of this boat, this Koalkraft boat?

A. I don't remember it just offhand. My ship's license will give the dimensions (producing a document). 159 feet in length, 37 feet 6 inches breadth, 10 feet 4 inches draft, 376.20 gross tons, 312 net tons.

Q. How is this vessel propelled, Captain?

A. By steam.

Q. Now, in order to operate this vessel, do you have to perform any functions or do you have to report or are you subject to any department for an inspection or issuance of a certificate or anything of that kind?

A. We are inspected once a year by the Federal Government, steamboat inspectors.

Q. This was under the United States Government?

A. Yes, sir.

Q. Now, did you have a certificate permitting you to operate this vessel on the date of this supposed occurrence?

A. Yes, sir.

Q. Do you have that certificate with you?

A. No, this is the ship's license.

Q. That is the license?

A. Yes, sir. This expires the 1st of July, 1938.

Mr. Wilson: Would you like to see that license, Mr. Commissioner?

23 Deputy Commissioner Bassett: No, I do not think it is necessary.

Mr. Wilson: Are you satisfied this boat is a duly licensed boat, or do you require more proof on that?

Deputy Commissioner Bassett: No, there is no question in my mind it is the boat.

Mr. Wilson: Are you satisfied the place where they are operating is navigable water? A navigable stream?

Deputy Commissioner Bassett: Yes.

Mr. Wilson: And that it comes under the Federal jurisdiction?

Deputy Commissioner Bassett: I think so.

Q. (By Mr. Wilson): Now, Captain, the work on this vessel was what?

A. Well, the work on this boat is to deliver coal to steamboats and other marine equipment.

Q. And these steamboat and other marine equipment were used on all of the Great Lakes and different parts of the Great Lakes?

A. Yes.

Q. Captain, how many men did you have on that boat with you?

A. Five men.

Q. What was the designation of those men as far as you were concerned?

24 A. I have one engineer, fireman and three deck hands.

Q. Now, can you give us the names of the deck hands that were working for you say from the 15th of October up to the date of this occurrence?

A. George Jornick, Joe Kete, and John Schumann.

Q. And John Schumann that you refer to is the deceased?

A. Yes, sir.

Q. Now, what was your engineer's name, Captain?

A. Harry Zivney.

Q. And your fireman's name?

A. Ray Kersten.

Q. They constituted the crew on that date, on the day of this alleged occurrence; on October 31st?

A. Yes.

Mr. Spiegel: Of course, I object to the form of the question. That is an issue here, whether it was a crew or not.

Deputy Commissioner Bassett: That is all right. We can decide that afterwards.

Q. (By Deputy Commissioner Bassett) There was one engineer and one what?

A. One fireman and three deckhands.

Q. You say two deck hands.

A. Three deck hands.

Q. And among the deckhands you claim the deceased was one?

25 A. Yes, sir.

Q. (By Mr. Wilson) Those, with yourself, constituted the crew of this vessel?

A. Yes, sir.

Q. Were you men divided into teams or partners, or anything of that kind, Captain?

A. Why, in the handling of the mooring of the boat there were two men forward and two aft. The aft men, one of them was a fireman.

Q. You designated them as partners?

A. Well, they call them all partners.

Q. Well, who worked with your fireman on the after end?

A. At that time, John Schumann.

Q. That was on the date of this occurrence?

A. Yes.

Q. Captain, can you tell me what Schumann's duties were while he was working on this boat?

A. Why, he was a deck hand and he done general deck work. He handled lines, got on the dock and took the stern line and made it fast and on leaving the dock he threw the stern line off the dock.

Q. Did he assist the fireman at any time?

A. Why, yes, they were all willing to take an interest in learning to fire so in case the fireman got sick we could have a man to replace him.

26 Q. And one of these three deck hands that you mentioned would replace the fireman if he was sick or off or quit or anything of that kind?

A. Yes.

Q. Who hired John Schumann?

A. I did, sir.

Q. Who hired the rest of the members of this crew?

A. I did.

Q. Under what status was he paid? I mean by that, was he paid as a seaman or sailor or deck hand?

A. He was paid as a deck hand, as a member of the crew of the boat Koalkraft.

Q. And that was the only pay he ever received while working for you?

A. Yes, sir.

Q. He took orders solely from you, is that right, Captain?

A. Yes, sir.

Mr. Wilson: I think that is all the questions I have.

Deputy Commissioner Bassett: I would like to ask a few questions.

Q. (By Deputy Commissioner Bassett) You say he worked with the fireman on the day he was injured?

A. Yes, sir. That is, he handled the line. The fireman ran the winch that operates the line and he passed the line off the deck, or put it on the dock, whatever 27 the occasion would be.

Q. But, you said you worked with him so that he would become familiar with firing so that he could take the job of fireman?

A. Yes, sir, they generally do that.

Q. You brought that in at some time. You say he was working with the winch now.

A. Yes, sir.

Q. How much an hour did you pay this man?

A. Sixty cents.

Q. That extra help that goes on those boats are fifty cents an hour men. You paid him sixty cents an hour, did you?

A. Yes, sir.

Q. There were no quarters on that boat for anyone to stay on there, were there?

A. No, sir.

Q. And his sole pay was sixty cents an hour, and how many hours a day?

A. Well, that varied all the way from eight to twelve hours. We are not allowed to work any more than twelve hours out of any twenty-four hours, that is continuously.

Q. Explain more in detail just what this boat was used for. You say it fueled other vessels or ships?

A. Yes.

Q. I do not understand that. Tell me.

28 A. Well, it is a lighter that is built with a hopper so that coal will run down. There is a belt conveyor on the bottom of these hoppers that the coal out of the hoppers runs on to and it is carried to an elevator. The elevator runs up and there is a chute and it is swung over to a boat and gravity brings it down.

Mr. Wilson: Mr. Commissioner, would you like to have that picture introduced in evidence? (Indicating) I thought it might be used here and I have brought it along.

Q. (By Deputy Commissioner Bassett) In employing this kind of help they sign no papers, do they?

A. No, sir.

Q. Of course, crews of other ships sailing the Great Lakes they all sign articles, don't they?

A. Yes, sir. No local boat signs any articles. Anybody that is operating in the harbor or rivers don't sign any articles. As a rule, the boats that operate between different ports on different lakes sign articles.

Q. In this picture there you are up against a pile of coal.

A. Well, we are laying at the dock.

Q. Is that where you go to take on coal and then you go down the stream and meet another boat, is that it?

A. This is what they call the Stevens and Adams loading machine. The boom swings out from the dock 29 and the coal is loaded on there.

Q. How long did this deceased work for you?

A. From the 5th of October to the morning of the 31st.

Q. Twenty-six days?

A. Yes.

Mr. Wilson: I will offer that picture in evidence if you want it in, Mr. Commissioner.

Deputy Commissioner Bassett: Well, you suit yourself about that. I just wanted to get information here.

Mr. Wilson: Yes, sir. I would like to ask the witness one more question.

Q. (By Mr. Wilson) Did you hire any other men in or about the work on that boat, other than those men you have mentioned here, or that same number in a crew?

A. No, sir, I did not. You mean on some other boat?

Q. No, I mean on this same boat.

A. No, sir.

Q. They did all the work in connection with this one boat?

A. Yes, sir.

Q. (By Deputy Commissioner Bassett) You say his duties were those of a deck hand?

A. Yes.

Q. What are the duties of a deck hand on a boat of this sort?

A. Well, just general labor, keeping it clean, handling the lines, painting or whatever you ask him to do.

Q. Do you have any other work on this boat besides coaling or fueling?

A. No, sir.

Q. You do not carry anything else?

A. No.

Q. You say there are five men employed on one of these boats?

A. Six, including myself.

Q. Yes.

A. Six is the crew.

Q. Outside of yourself, how long are these men usually employed? Do you have to change that kind of help often?

A. No, we don't. The men we have stay pretty steady with us. I have a man who has been with me five or six years down there. I had one man who was a fireman down there eleven years with me.

Q. Do you employ extra help?

A. No, sir.

Q. You never have to take on extra help outside of the six of you?

A. No, sir.

Q. Do they have to have any experience when they come on there, any kind of experience as seamen or sailors or whatever you call them?

31 A. No, sir.

Q. They come on like laborers?

A. Yes. They pick up the work as they work along there.

Q. Do the deck hands work up to be firemen or work up to be the captain, or something of that kind?

A. Yes, sir.

Q. Does the South Chicago Coal and Dock Company have other boats besides the Koalkraft?

A. No, sir.

Q. That is the only one that they own?

A. Yes, sir.

Deputy Commissioner Bassett: I think that is all I have.

Cross-Examination.

Q. (By Mr. Spiegel) Among the four men that were employed besides Mr. Schumann, what is the longest period of time that any of them was employed, of the four men that worked at that time?

Mr. Wilson: You mean of the five men?

Mr. Spiegel: Yes, of the five men besides Schumann.

A. The Engineer.

Exhibit B.

Q. (By Mr. Spiegel) How long was the engineer working for you? What was his name?

A. Harry Zivney.

Q. How long was he working for you?

A. Oh, I don't remember. It was around seven or eight years, I guess.

32 Q. Continuous?

A. Continuous, yes.

Q. Was Zivney the fireman?

A. No, he was the engineer.

Q. How long did the fireman work there?

A. He has worked for me off and on for five years.

Q. Immediately preceding this accident, how long was he employed by you?

A. Since the 1st of April.

Q. Since the 1st of April?

A. Yes, sir.

Q. What was his pay, how much was he paid?

A. He was paid 65 cents an hour.

Q. And the deck hand was paid 60 cents an hour?

A. Yes, sir.

Q. As a matter of fact, you know that Schumann did not do any work as a fireman, don't you?

A. Why, no, he was not paid to work as a fireman, no, sir.

Q. No. Now, as a matter of fact, Schumann was called in only by telephone to come whenever there was work?

A. Yes, sir.

Q. Otherwise he was staying home waiting for a call to come to work?

A. Yes, sir.

Q. He was a plain laborer?

33 A. Yes, sir. In other words, he was called a deck hand.

Q. Now, he did not participate in any of the navigation of the boat, did he?

A. No, sir.

Q. Isn't it a fact that the man's main work consisted of coaling up the steamboat, when the boat came up it was his duty to coal up the steamboat?

A. No, while discharging the coal his duty was to keep the coal running in these hoppers up on deck with a pole.

Q. If there was no work he didn't have any claim on you, if there was no work he would not come and ask for work. Isn't that correct?

A. Why, no.

Q. He would only come when you called him?

A. Why, yes. Well, generally he knew when he went home at night whether to wait for a call or come out the next day.

Q. There was no obligation on your part to give him work?

A. No, sir.

Q. Will you state at least one act that Schumann did which requires any knowledge of seamanship?

A. Why, throwing a heaving line I think would be an act of seamanship. There are quite a few men that has to learn that.

Q. Did you teach him that?

A. The crew taught him. I didn't.

Q. That was the only act of seamanship that he 34 did, you would say?

A. Yes.

Q. As a matter of fact while a deck hand is in transportation, employed from the dry dock to the place where they have to attend to the other boat, there is nothing for them to do?

A. No, sir.

Mr. Spiegel: That is all.

Redirect Examination.

Q. (By Mr. Wilson) Captain, did this man do any other work there except on the boat?

A. No, sir.

Q. Did you call him every time you called the rest of the crew to handle this job of work while he was in your employ?

A. Yes, sir.

Q. Who did he replace, do you know?

Mr. Spiegel: How can he answer that?

Mr. Wilson: Well, the Commissioner asked him if he hired people from time to time. Now, did he replace his brother? That is what I want to know.

Q. (By Mr. Wilson) Wasn't it his brother he replaced?

A. No, sir.

Q. Do you know how long that man was with you whose place he took, or do you remember who that was?

A. Yes. That fellow's name was Jerkovitch. He was a former fireman. We had a fireman by the name of 35 Robinson for about eleven years and this man Jerkovitch went in there and when Jerkovitch quit, Kersten took his place, and then this man Schumann took Kersten's place.

Exhibit B.

Q. How long had Kersten been working for you?

A. Well, for the last five years.

Q. This boat just operates during the summer?

A. About eight months of the year. It generally comes out the forepart of March or the first of April. The first of April last year, I guess, we got started.

Q. (By Deputy Commissioner Bassett) Captain, you say this man had no duties except when the ship was moored?

A. Yes, sir.

Q. He had no duties while you were on the move?

A. No, sir.

Q. (By Mr. Wilson) Well, when he got to the end of the trip, if he was out to coal this vessel, what did he do out there? Did he attach the lines or anything of that kind to the boat you were coaling?

A. Nothing more than throw a heaving line up to one of the deck hands on the other boat.

Q. And that was his duty on the after end?

A. Yes.

Q. If there was any cleanup work, did he do that out there or at the end of the trip?

A. It was always done at the dock.

36 Q. Well, after he left the dock, who brought in those lines?

A. Well, if the boat was on the right side of the dock, he just threw it up but if the boat happened to be on the other side of the dock the only duty he had was to transfer the line from one side of the boat to the other.

Mr. Wilson: That is all.

Q. (By Deputy Commissioner Bassett) Captain, you said when you were moored and unloading the deceased's duties were to keep the coal going?

A. Yes, sir. The boat has got hoppers here (indicating on the photograph) and sometimes the coal quits running and then they use a long pole to keep the coal free so it will run.

Deputy Commissioner Bassett: That is all.

Recross Examination.

Q. (By Mr. Spiegel) Isn't it a fact that if he gave any assistance to the fireman it would be incidental to his main duty?

A. Yes, sir.

Q. (By Deputy Commissioner Bassett) Have you on you what you paid this man for twenty-six days? That is the only time he worked, from the 5th to the 31st, you said?

A. Yes.

A. That would be twenty-six days. Of course, there would be Sundays out and so forth and so on. I merely wanted to know about how much time you paid him.

37 Mr. Wilson: I have the record right here, Mr. Commissioner.

Q. (By Deputy Commissioner Bassett) Were you paid every day?

A. No, sir, we were paid twice a month. We were paid on the 5th and 20th. The 5th and 20th were paydays.

Mr. Wilson: I have the time sheet taken from the payroll. It is dated 10-15-37. His number apparently was 7374. It starts on the 5th day of the month, October, and runs down to and including the 15th, every day. At the bottom of the sheet it says, "John Schumann, occupation, deck hand. Koalkraft." If you want the hours I will give them to you day by day.

Deputy Commissioner Bassett: No, I just want to know how much he got.

Mr. Wilson: There was a total of 117 hours, apparently, and the amount of money paid was \$70.20.

Then there is another payroll time sheet here entitled the same as the other, running from the 16th day of October to the 30th day of October, both inclusive. This sheet is dated 10-31-37, and shows 152 hours, or a total of \$91.20, and this sheet shows that he worked every day and the duration of the work was never less than eight or more than twelve hours.

Q. (By Deputy Commissioner Bassett) Did he work on Sundays too?

38 A. Yes, sir.

Mr. Wilson: And the hourly rate shown on the sheet is 60 cents per hour. It is right here in figures. He is designated as a deck hand on the Koalkraft.

Q. (By Mr. Spiegel) As a matter of fact, Captain, you called him on two occasions to do some work.

A. Yes, sir.

Q. And the last occasion was a call at night to do some work?

A. Three o'clock in the morning.

Deputy Commissioner Bassett: He worked an average of ten hours a day.

Mr. Wilson: Yes. The time sheet shows 12, 8, and then three 12s, then a 10, then a 12, 8, 10, 8, 12, 10, 8, 8 and 8.

Deputy Commissioner Bassett: I just add 152 hours; 15 days and ten times fifteen is 150.

Mr. Wilson: Well, this is what appears on the time sheet

and these are the official records of the company and I have a man here to identify them if you want that done.

Deputy Commissioner Bassett: No, I think that is immaterial. I think that is all I have.

Mr. Spiegel: That is all.

Q. (By Mr. Wilson) You do not know anything about this accident, do you?

39 A. No, sir.

Mr. Spiegel: Well, you are not going into how the accident happened now, are you? I am not interested in that at all.

Mr. Wilson: All right, that is all for the Captain.

Deputy Commissioner Bassett: He was on the boat when last seen, and all that.

Mr. Spiegel: Yes.

(Witness excused.)

Deputy Commissioner Bassett: I think we have established a rate there. You have shown for the time he worked about \$161.

Mr. Wilson: Yes.

Deputy Commissioner Bassett: We have not agreed on a rate here. Of course, the Chicago rate as agreed for help where they cannot show the amount, is \$11.85. There is an agreement here in Chicago that the rate is \$11.85 per week.

Mr. Wilson: Is that for deck hands, sailors and so forth, or is that for longshoremen?

Deputy Commissioner Bassett: Oh, we are using it for men around here. Unless the widow can show that he made more than \$11.85 a week—

Mr. Wilson: Well, that is the actual payroll that I gave you.

Deputy Commissioner Bassett: Yes. If the case is 40 under the Act and is allowed, our paying her would depend on how much a week we would have to have. However, it would not make any difference to the Insurance Company. They would just as leave pay it the other way if they have to pay it.

Do you have some more witnesses as to what you think his duties were, and so forth, and things of that kind?

Mr. Spiegel: Yes.

Deputy Commissioner Bassett: Well, of course, we want to hear that.

Mr. Spiegel: Let them finish first.

Mr. Wilson: Well, I have put on enough to overcome your presumption, in my opinion. If you have got anything to put on to the contrary, all right.

Mr. Spiegel: Are you through?

Mr. Wilson: I have put on the Captain and if you have anything to put on, I will rebutt it.

Deputy Commissioner Bassett: I would like to hear all there is to know on the subject, what his duties were and what he was doing. I do not care who tells it but I would like to know it because I have to decide it finally.

Mr. Spiegel: I will put the widow on, and, Mr. Commissioner, I will have you ask the questions.

Deputy Commissioner Bassett: I do not want to ask any offhand. I would rather ask a few questions after some facts have been developed.

41 MARY SCHUMANN, was sworn and testified as follows:

Digest Examination.

Q. (By Mr. Spiegel.) State your name.

A. Mary Schumann.

Q. Where do you live?

A. 10850 Avenue J.

Q. You are the widow of John Schumann, deceased?

A. Yes.

Q. And you are the mother of John Schumann's child and yours, Jeanette?

A. Yes.

Q. How old is Jeanette?

A. She is seventeen months old.

Q. Now, how old was John before he died?

A. He was thirty-two.

Q. What was John doing before he started to work for the Koalkraft?

A. He was working at the flour mill on Indianapolis Boulevard before he got this job.

Q. What was he doing there?

A. He was a miller.

Q. How much was he making a week when working as a miller?

A. Well, his pay was \$25 a week.

Q. He started to work for the South Chicago Coal 42 and Dock Company about what time?

A. Well, he went over there to find out if they needed his help and they told him no, so a woman came and told me there was a telephone call for Johnny. So I told him, I says, "You had better go and answer it." It was the coal dock. He went to work and he worked a

Exhibit B.

couple of hours and he was home at two o'clock that afternoon.

Q. What date was that? October 6th, was it?

A. I don't know exactly.

Q. Deputy Commissioner Bassett: Well, they said he went to work on the 5th.

The Witness: Yes, the 5th.

Q. (By Mr. Spiegel.) When he came back after he worked a few hours at the dock, what did he tell you?

A. Well, he told me he liked the job and he liked the fellows.

Q. What kind of work was he doing?

A. He was doing labor work. He liked the job real well, he said, and he said they told him to go back out and call the next morning.

Q. Did he tell you he was hired for the job and hired when you went there?

A. Yes, he said he was hired for the job. It was on and off.

Q. It was an on and off job, is that right?

43 A. Yes.

Q. Did you have a telephone?

A. No, I couldn't afford a phone, and so I asked a neighbor to call up for a week.

Q. And then you put in a telephone?

A. Yes, because the neighbors were tired and said they didn't want to wake up at 1:30 in the morning.

Q. And when the calls came in, he went out?

A. Yes, that is when he went out.

Q. Did he tell you in his lifetime what his duties in the deck were, on the boat?

A. Well, he said that one Saturday they went out he washed the Captain's deck and when he got through with that he could come home. So when he got home he said he might get called that evening, but he didn't, and so the Captain called that morning and said he should come at eight o'clock.

Q. Did he tell you what he did at that time?

A. He told me he ran up the hopper and freed the coal.

Q. What did he tell you his main duties were on the boat?

A. Well, he told me he was supposed to learn certain kinds of knots so when they threw the rope in the water they could tie it.

Q. What were his main duties that he told you?

A. Main duties!

Q. About the coal. Do you understand my question? What was he doing on the boat?

A. Well, he was just a laborer and did whatever they told him he had to do.

Q. What was the barge doing? What were they doing there? It was a coal barge, wasn't it?

A. Yes.

Q. What was he doing there?

A. Well, to take this here line.

Q. And pull up the other one?

A. Yes, he was supposed to let one fellow down there know—I really don't know what kind of job he had because he didn't say much. He went to sleep and was tired.

Q. Now, he was sleeping at home?

A. Yes, he was sleeping that night and the baby was playing with him (the witness weeps), and he said, I have to quit at 1:30 and go to work." The baby was even sick that night.

Q. Now calm yourself.

A. He says, "Don't worry, I will come back." And he never did. (Witness further weeps.) He really thought of me and the baby a whole lot.

Q. Now, Mrs. Schumann, was John ever employed on any steamboat at any time before?

A. No, this was the first time.

Mr. Wilson: Wait a minute. I object to that. That is immaterial. She can't prove that.

45 Mr. Spiegel: If she knows.

Q. No, he worked at other places, but this was the first time he got a job on that boat.

Q. (By Deputy Commissioner Bassett.) Did he work on other boats?

A. No, he didn't. That was the first boat he got a job on. He was a man that took any kind of work just to support his mother and children and baby and wife.

Q. (By Mr. Spiegel.) But, that was his first boat job?

A. That was his first job on a boat.

Q. He was paid for that. How was he paid? By the week or by the hour?

A. On the boat job?

Q. Yes.

Q. Well, he got paid every two weeks.

Deputy Commissioner Bassett: I think that is established. They establish that he got 60 cents an hour. It shows he was paid twice a month. They testified that he got \$70.20 at one time and \$91.20 another time.

Q. (By Deputy Commissioner Bassett.) You knew that to be a fact, did you?

A. Yes.

Deputy Commissioner Bassett: Well, that is sufficient.

Q. (By Mr. Spiegel.) Did he at any time tell you he did fireman's work?

46 A. No, only he said he helped the fireman once in a while.

Q. When was that once in a while he told you?

A. Well, he was supposed to fire up that Sunday when he went.

Q. What was the reason?

A. The fireman said that he saw him last. He never quarreled with anybody. He never was with no drunk or anything.

Mr. Spiegel: That is all.

Cross-Examination.

Q. (By Mr. Wilson.) He told you that his work was to be on the boat, did he?

A. Yes, always on the boat. He never had much to say about it.

Q. He told you that he took the lines off when the boat started and then hooked them up again when the boat came back to the dock? Did he tell you that?

A. (No response.)

Q. Mrs. Schumann?

A. Yes.

Mr. Spiegel: What is that? Did you hear the question?

Q. (By Mr. Wilson.) Did you hear the question I asked you?

A. Yes.

Mr. Spiegel: I didn't hear the question.

(The question was read.)

The Witness: Yes.

47 Q. (By Mr. Wilson.) Did he tell you that he did whatever the Captain told him to do on the boat?

A. Yes, whatever was his duty.

Q. And all his duties were on that boat.

A. Right on that boat.

Q. Did he tell you he was hired as a deck hand for the boat?

A. Well, he said that is what the rest of the crew called him, but he called himself a laborer.

Q. But the rest of the crew called themselves deck hands?

A. Yes.

Q. And they called him a deck hand?

A. Yes.

Q. And you knew on the night of this occurrence when he went out that he was going out to work on the boat, did you?

A. Yes.

Q. He was supposed to leave at 1:30.

A. Yes, they called up at 1:30 and he was supposed to appear for work at two o'clock that morning.

Q. I see. That is all.

Mr. Spiegel: That is all.

Q. (By Deputy Commissioner Bassett.) How long did he work for the flour mill? Do you say that was on Indianapolis Avenue out there?

A. Yes. Oh, I don't know. He was working there quite a long time. The place went bankrupt and they 48 moved out of the town, and he did not want to leave his mother and he thought heck, as long as he was living out there he would get a job out there and so he got that job.

Q. How many years did he work at the flour mill?

A. Oh, I don't know; his brother would know.

Q. Well, would you know? Was it two years or three years or five years?

A. Oh, I think it was about five years.

Q. Five years?

A. Yes.

Q. And his pay was \$25.00 a week?

A. Yes.

Deputy Commissioner Bassett: That is all.

(Witness excused.)

Mr. Wilson: I will offer that picture in evidence as an exhibit, if the Commissioner please.

Mr. Spiegel: There is no objection.

Deputy Commissioner Bassett: All right.

(Said photograph was marked EXHIBIT 2, and is attached hereto.)

STANLEY SCHUMANN, was sworn and testified as follows:

Direct Examination.

Q. (By Mr. Spiegel.) Will you give us your full name?

A. Stanley Schumann.

49 Q. Where do you live, Mr. Schumann?

A. 10449 Avenue H.

Q. What is your business or occupation?

A. My occupation is handyman at the Wisconsin Steel Company.

Q. Stanley, were you a brother of John Schumann?

A. I was.

Q. Were you ever employed by the same company for which your brother worked, namely, by the South Chicago Coal and Dock Company?

A. I was.

Q. As what?

A. As a laborer in the yard.

Q. Coal yards?

A. Coal yards; yes.

Q. Are you familiar with coal barge operations?

A. Yes, sir.

Q. Do you know of your own knowledge the kind of work your brother did while employed by the coal barge?

A. Well,—

Q. Do you know?

A. Yes, I do know.

Q. Now, did you speak to him about his work in his lifetime?

Mr. Wilson: Wait a minute. I am going to object to that. That is not admissible.

50 Mr. Spiegel: I submit to the Commissioner there is absolutely no restriction of any kind on the line of evidence in this hearing. The statute definitely says that even hearsay is admissible here. It is for the Commission to decide how much credit to give to it.

Mr. Wilson: Well, Section 23 says, "Declaration of a deceased employee concerning the injury in respect of which the investigation or inquiry is being made—"

Mr. Spiegel: Will you tell us from what you are reading?

Mr. Wilson: Section 23 of the Act.

Mr. Spiegel: Of what?

Mr. Wilson: The Act.

Mr. Spiegel: Under (a) or (b)?

Mr. Wilson: (a) "Declarations of a deceased employe concerning the injury in respect of which the investigation or inquiry is being made or the hearing conducted shall be received in evidence and shall, if corroborated by other evidence be sufficient to establish the injury."

Now, it gives you no right to introduce any other statements of the deceased.

Mr. Spiegel: I am glad you called my attention to it because it does support my contention. Hearsay statements are admissible here because there will be other evidence and the Commission will decide what weight to give to it. The Commissioner hearing the evidence here may decide 51 that the testimony of the Captain corroborates the statements here.

Mr. Wilson: Oh, well, go ahead. We will save time.

Deputy Commissioner Bassett: Yes, it does not make any difference.

Q. (By Mr. Spiegel.) All right. Tell us what you know from your conversation with John Schumann and from your own knowledge what the duties of John Schumann were while working on the coal barge.

A. Well, he was working for the coal company. I know that he was in doubt of tying a certain knot and he asked me how to go about it and I gave him my best opinion about it. He also, that I know of, fueled that barge up at the dock because they haven't a leg to fuel that barge up. That is the belt conveying the coal from the coal dock on the barge (indicating on the photograph).

Q. So he helped load up the barge?

A. Absolutely; yes. And from there whenever we fueled any boat along the river it was his duty to push down the coal from the coal pockets on to the conveyor that conveyed the coal on to the boat for that fueling.

Q. Outside of that was there anything that he did, any other labor?

A. Well, outside of what the labor amounted to at the dock, to put the coal on the barge, and then from the barge to the boat, that they were fueling.

Q. That is all it was?

52 A. Yes.

Q. (By Deputy Commissioner Bassett.) Where was he when he would do that work? On the boat or on the dock?

A. On the dock.

Q. Out on the dock and not on the boat?

A. On the dock.

Deputy Commissioner Bassett: Has the Captain gone?

Mr. Wilson: No, the Captain is here.

Q. (By Mr. Spiegel.) That was on a particular Saturday he told you he did that? Is that what you said?

A. No, this particular job that the Commissioner is asking me about is on this night.

Q. No, I am talking about the fueling up of the barge.

A. The fueling of the barge is an every day occurrence over there. If the barge is empty, they come in to fuel it and if they are busy loading up the boat, they use that leg to fuel that barge.

Q. And you know that John did that work?

A. He did that work; yes.

Q. And you know John was staying home and receiving his calls whenever needed, is that right?

A. That is right.

Q. And you know he was getting his pay only by the hours he actually put in when he was working?

A. That's right.

53 Mr. Spiegel: That is all.

Cross-Examination.

Q. (By Mr. Wilson.) You know he was hired as a member of the crew on this Koalkraft, do you not?

A. Yes, sir.

Q. And all the work that he did had to do with the work on the Koalkraft?

A. Yes.

Q. And he worked on the after end of the Koalkraft, didn't he?

A. Yes.

Q. Throwing off lines and taking them up?

A. Yes.

Q. He never worked anywhere except in connection with the Koalkraft?

A. He always worked in connection with the Koalkraft, even when in the yard.

Q. And his immediate superior was the Captain of that Koalkraft?

A. Yes.

Q. He did not take any orders from anybody else?

A. No.

Q. Except the members of that boat?

- A. That is right.
Q. Were you ever present when he was working?
54 A. While at work!
Q. Yes.
A. No, I was not.
Q. You never saw him do any work?
A. No.
Q. Anything you know is what he told you?
A. Yes, what he told me.
Mr. Wilson: That is all.

Redirect Examination.

Q. (By Mr. Spiegel.) You have seen people working from the coal docks into the barge?

- A. Yes.
Q. Sometimes members of the crew do that work?
A. Yes, sure.

Mr. Spiegel: That is all.

Q. (By Deputy Commissioner Bassett.) Did you ever work on the Koalkraft?

- A. No, I haven't.
Q. Have you been on any of those boats at all?

A. I have been on the boat, to clean up the bottom of them, that is, cleaning up the bottom of the boat when they have come in with a load of coal and so on. I have hired out as a laborer to clean up the bottom and pick up the remains of the coal off the bottom of the boat. They call that clean-up work.

55 Q. You say all the work that your brother done was in connection with the unloading of coal. Did you make that statement? All his work was in connection with the unloading of the coal. Did you mean to convey he was not a part of the movement of the boat?

- A. He was a part of the movement of the boat, yes.
Q. He was. In what way?

A. Well, with the lines.

Q. (By Mr. Wilson.) He also did some of the firing, too, as a relief fireman, didn't he?

A. Well, that I couldn't tell you; whether he has done that or not. I know he did have something to do with the lines. He asked me about tying a certain knot. That is what he wanted to see me about.

Q. (By Mr. Spiegel.) Isn't it a fact that that was incidental to his main duty, namely, the fueling of the big steamboats?

Mr. Wilson: Well, that would be a conclusion on this man's part.

Deputy Commissioner Bassett: That would be up to the Commissioner to decide that from the evidence given.

The Witness: He was just like any other good man that would help one another out in a pinch, that's all I would suggest.

Q. (By Mr. Spiegel.) As one laborer to another?

56 A. Yes, that is all I could think of. But, his duties were not as a fireman because he was not hired as a fireman.

Mr. Clinton: Well, that is within the province of the Commissioner.

Mr. Wilson: He was hired as a deck hand. That is how he was hired.

The Witness: Well, how he was hired, I don't know.

Q. (By Mr. Spiegel.) Did your brother know about working on boats before the accident? Had he ever worked on boats before?

A. He himself?

Q. Yes.

A. No, not that I know of.

Mr. Spiegel: That is all.

(Witness excused.)

Deputy Commissioner Bassett: Do you have any more witnesses, Mr. Spiegel?

Mr. Spiegel: Not at this time, no.

Mr. Wilson: I have the fireman here. I will have him come in.

Deputy Commissioner Bassett: All right, we will hear the fireman.

RAYMOND KERSTEN, was sworn and testified as follows:

Direct Examination.

Q. (By Mr. Wilson.) What is your name?

57 A. Raymond Kersten.

Q. What is your address?

A. 6223 Dorchester.

Q. On October 31, 1937, what was your occupation?

A. Fireman on Koalkraft.

Q. For whom?

A. On the Koalkraft.

Q. Yes, but by what company were you employed?

A. South Chicago Coal and Dock Company.

Q. Did you know who the members of the crew were on that date?

A. Yes.

Q. Can you give us their names or tell us how many there were?

A. There were six of us altogether; three deck hands, engineer, captain and fireman.

Q. Did you know John Schumann?

A. Yes, sir.

Q. What part of the crew was he?

A. He was on the after deck, a deck hand on the after deck.

Q. What were his duties? Can you tell us?

A. Well, his duties, his main duty was to poke down the coal from the hopper on to the belt when it stuck there. He also put the line on the boat for me. I ran the after winch. As soon as I took the cable off the winch, he 58 stood there and gave me signals. When the boat was tied up he went up and pushed coal down.

Q. What were the signals?

A. Well, the Captain gives the signal with his hand like that (illustrating) and that means to take it up. Well, he passes that signal on to me, Schumann does, because I can't see where I am, I can't see the Captain where I am. I am in the middle and here is the winch and the Captain stands up on the deck on top and John stood on the end and received the signals from the Captain and passed them on to me.

Q. Well, he stood on the deck of the boat and passed the signals from the Captain on to you for the movement of the line that you tied up to the boat with?

A. Yes.

Q. And that had to do with setting the boat against the dock where you were refueling?

A. Spotting the boat, they call it.

Q. Yes. Now, did he do any work other than that occasionally?

A. Well, he went down below and helped scrub the deck down there.

Q. Yes.

A. Any painting that was necessary to be done on the boat was a part of his job. The deck hand maintained the outside of the boat and inside. I maintained the engine 59 room and the fire hole.

Q. Well, now, when he moved this coal in the hopper, was he on or off the boat?

A. He was on this second deck here (indicating on the photograph marked Exhibit 2). He stands along there on the edges with a long pole in his hand and the coal fits in the corner. It is a three-cornered pocket. He pushes the coal out of the corner to clean the pocket out completely.

Q. Now, were there any other men besides the six of you handling the boat when you were refueling it?

A. No.

Q. How long have you been on that boat?

A. Six years.

Q. Have you always been a fireman on this boat?

A. No, I was a fireman for two months.

Q. Then you were a fireman on that day?

A. Well, I was deck hand before I was fireman.

Q. Did you ever have the same job Schumann had?

A. I had the same job for two years.

Q. I see. Now, that boat only operates a portion of the year, doesn't it?

A. It is a seasonal job, eight months.

Q. And during that time you are called whenever you are needed?

A. Whenever I am needed, twenty-four hours duty.

60 Q. But, you only work twelve hours out of every twenty-four?

A. Yes.

Q. Now, every time that boat goes out on a refueling job, all six members of the crew have to go with it, is that right?

A. Yes, sir.

Q. And as long as a man continues to be a part of that crew they don't employ anyone else to do any of the work?

A. No, unless a man is sick at home. Then another man is used to take his place.

Q. You have to have six men to do that work?

A. The law says six men on the boat.

Q. The law says six men on the boat as members of the crew, is that it?

A. Yes, sir.

Q. Do you fellows do any other work around that place outside of loading and unloading this boat?

A. We load our boat.

Q. Well, I mean your work is entirely confined to the Koalkraft?

A. My work is entirely confined to the Koalkraft.

Q. Meaning the deck hands who work there like Schumann?

A. Well, they run this rig on the dock.

Q. But, that is only for the Koalkraft?

A. Yes. Not for trucks or anything else.

Q. Did you do that on the night of this accident?

61 A. Yes. We loaded the boat that night before we went home.

Q. And when you came back it was already to go?

A. It was already to sail.

Q. Now, on the night of this occurrence, the last time you saw Schumann, where was he?

A. He was in the fire hole with me.

Q. Where was the boat at that time?

A. About 20 feet from the dock.

Q. In motion?

A. Approximately. I can't say definitely. Yes, the boat was in motion to go ahead.

Q. Before that, he had thrown the lines off?

A. He was through with that, he had thrown the lines off and jumped on the boat.

Q. And then you had been at the winch and winding the line up?

A. Yes.

Q. And after the boat cut loose from the dock you went into the engine room?

A. Into the fire hole immediately.

Q. And he followed you in?

A. Yes.

Q. And you were in motion at the time he was in the fire hole?

A. Yes.

62 Q. What was going on at that time? Was the boat moving up the river?

A. It was going out about half speed, I guess, checked speed, waiting for the bridge to open.

Q. But, you were out on the river entirely free from the dock?

A. Yes.

Q. You had no lines attached to anything else?

A. No.

Cross-Examination.

Q. (By Mr. Spiegel) Now, the deck hands, Mr. Kersten, maintained, you say, the inside and outside of the boat?

A. Yes.

Q. That is your expression?

A. Yes.

Exhibit B.

Q. That is, you mean they maintained its appearance?

A. Well, painting and scrubbing.

Q. It has nothing to do with the navigation of the boat, has it?

A. Nothing to do with the steering or anything of that kind, if that is what you mean.

Q. The fireman and the engineer, they have to do with the steering of the boat?

A. No, the Captain steers the boat.

Q. You say the deck hands have nothing to do with
63 the steering or with the navigation of the boat?

A. No, they don't.

Q. And while the boat is in motion the deck hands really have nothing to do?

A. Well, I would say the deck hand has nothing to do except when there is an emergency breakdown, if there is any repair work.

Q. And if Schumann done any firing for you it was as an accommodation to you or because he wanted to do it himself?

A. Yes. It was mostly an accommodation. We shared with each other a good deal. We got along very nicely.

Q. He was a good boy. Now, Mr. Kersten, you say this boat was refueled, is that right?

A. Yes, we refueled our own boat.

Q. The day before?

A. The evening before.

Q. And that means the people worked on the dock?

A. No, we refueled our own boat.

Q. From the dry dock, is that right?

A. Yes.

Q. And Schumann did a part of that work, too?

A. He was what we call the pocket man on the boat. These are all pockets (indicating on the photograph marked Exhibit 2). They pile coal on top of them and he spots that stuff and regulates it.

64 Q. Well, anybody could have worked on the dry dock and helped to refuel the boat and convey the coal into your barge, is that right?

A. Yes, the other two deck hands do that, too. There is two men on the dock.

Q. You said before that the main duty of John Schumann was to refuel this steamboat when your coal barge would come up to it? That was his main duty?

A. Yes.

Mr. Spiegel: That is all.

Redirect Examination.

Q. (By Mr. Wilson) You said Schumann worked on the boat all the time the refueling was being done?

A. Yes.

Q. He did not work on the top at all?

A. No. He worked at the forward winch.

Q. He had charge of the forward winch?

A. Yes.

Q. He never at any time worked on the dock while refueling your boat that you know of?

A. Not as I know of.

Q. The other two deck hands did that?

A. Yes, they were more accustomed to do it as they were broken in on the job.

Q. (By Mr. Spiegel) If he was more accustomed he would have done it, too?

65 A. Yes.

Q. Now, while he was working there he never slept there in the boat?

A. No.

Q. He stayed at home and was called whenever there was work?

A. Yes.

Q. That applied to all of you?

A. Yes.

Q. (By Mr. Wilson.) If there was a breakdown Schumann might have to help with the fixing of it, to help fix it up, is that right?

A. He would have to help. That is a part of his duty.

Q. Now, Schumann took all of his orders from the Captain, didn't he?

A. From the Captain.

Q. And the Captain hired everybody in that crew?

A. Well, the engineer hired his own fireman. That is a separate department.

Q. None of the crew did anything except what they had to do, that is the law?

A. That is right. That is all they had to do.

Mr. Wilson: That is all.

Q. (By Mr. Spiegel.) And when you refueled your own boat you done work on the dock?

A. Well, that is on the dock. The machine is there.

Mr. Spiegel: That is all.

66 Q. (By Commissioner Bassett.) You said Schumann was down here (indicating on the photograph)?

A. Yes, he was down on the stern when he gave signals.

Q. You say his main duties were to keep that coal going on the belt?

A. Yes, he has a long pole and he pokes the coal down into the pockets.

Q. Well, there would not be any orders to be given if he was standing alongside of the loading place or unloading there, would there?

A. No.

Q. Well, where would he be, when he is seeing that the coal is going along?

A. He stands there (indicating) with the pole in his hands.

Q. Where is that?

A. Right here on this little deck. That is a narrow deck down here. Here is a deck down here and here is one down here (indicating).

Q. He is up here on this deck here?

A. Yes. He jumps on to the dock from that deck.

Q. You say he painted and scrubbed. They usually clean up when there isn't any work to be done, any other work, don't they?

A. No, they don't do a thing in the winter time. I said his duty was painting and scrubbing as a part of his 67 job. But, he was not there at the time that work would be done. He was not there until late in October. We do that work in the summer.

Q. Well, I was going to ask you this: You have to have another crew so that if one of you lays off some one will be able to take his place. I know that men sometime have to lay off.

A. Occasionally they have to.

Q. If they cannot find them, somebody to take their place, what do they do then?

A. Well, there is usually, you see, men on the dock that have been broken in and they know their duties and we get them. If we can get them.

Q. Well, you say his main duty was to keep the coal on the belt and see that the coal got off that boat?

A. Yes, sir, that was his main job.

Deputy Commissioner Bassett: I think that is all.

(Discussion off the record.)

(Witness excused.)

Mr. Wilson: Well, you are satisfied this is a boat and you are satisfied that this was navigable waters.

Deputy Commissioner Bassett: Oh, yes.

(Further discussion off the record.)

Mr. Wilson: Will you stipulate that the Captain under the marine laws is forced to have a crew of six to operate that vessel?

Mr. Spiegel: The record shows that, but I do not
68 want to stipulate it.

Mr. Wilson: Well, then, I will bring the Captain back and let him testify about it unless the Commissioner will take official judicial notice of it.

Deputy Commissioner Bassett: I know that has been said. I take it that that is true.

ARTHUR J. SPOTTON, was recalled for further examination and testified as follows:

Direct Examination.

Q. (By Mr. Wilson.) You are the same Captain who testified before?

A. Yes, sir.

Q. And you have a license as a Captain to operate a boat in these navigable waters?

A. Yes, sir.

Q. Captain, is there any requirement in the law, state, federal or otherwise, that requires you to have any particular number of men to operate this Koalkraft?

A. Yes, sir.

Q. What is that law and what does it require?

A. It requires six men.

Q. What law is that?

A. That is a Federal law which we get a notification of every time the boat is inspected. That goes on the inspection certificate.

69 Q. That law requires you to have a crew. Now, I want to know particularly if the law requires six men to operate that vessel?

A. Yes.

Cross-Examination.

Q. (By Mr. Spiegel.) Well, when you speak of the law, you did not read that statute, did you?

A. No.

Q. Then how do you know about it?

A. The inspectors give us a certificate of inspection and it says how many men are required.

Exhibit B.

Q. Have you got that with you?

A. No, it is posted in the pilot house of the boat.

Mr. Spiegel: That is all.

Q. (By Commissioner Bassett.) Captain, if somebody didn't show up, what would you do then?

A. I would have to get a man.

Q. Supposing you could not get a man?

A. Well, we would have to call up the Seaboard Inspectors and get permission. It all depends on where our destination is.

Q. (By Mr. Spiegel.) Where do you get your men?

A. Well, we pick them up on the dock, or wherever we can get them.

Q. You pick them up on the dock?

70 A. Yes.

Mr. Spiegel: That is all.

(Witness excused.)

(Whereupon the hearing adjourned.)

I hereby certify that the foregoing is a full, correct and true transcript of all testimony taken at the hearing herein mentioned.

(Signed) Floyd Worden.

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EXHIBIT 1.

Samuel J. Spiegel

Attorney at Law

127 North Dearborn Street

Chicago

Telephone
Central 4472

January 21st, 1938

To: Mr. Samuel J. Spiegel

I am hereby giving you written authority to represent me before Deputy Commissioner at the hearings on my claim against the South Chicago Coal & Dock Company and at any other hearings pertaining to this claim.

Mrs. Mary Schuman. (Signed)

72

EXHIBIT C.

UNITED STATES EMPLOYEES' COMPENSATION COMMISSION,
Tenth Compensation District.

In the matter of the claim for compensation under the Longshoremen's and Harbor Workers' Compensation Act.

Mary Schumann, widow; and Jeanette Schumann, minor child of John Schumann, deceased,

Claimant,

vs.

South Chicago Coal & Dock Company,

Employer,

London Guarantee & Accident Company, Ltd.,

Insurance Carrier.

COMPENSATION ORDER AWARD OF COMPENSATION CASE NO. 468-1.

Such investigation in respect to the above entitled claim having been made as is considered necessary, and

A hearing having been duly held in conformity with law on January 27th, 1938,

The Deputy Commissioner makes the following:

Findings of Fact.

That on the 31st day of October, 1937, John Schumann was in the employ of the employer, South Chicago Coal & Dock Company at Chicago, in the State of Illinois in the Tenth Compensation District, established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, and that the liability of the employer for compensation under said Act was insured by the London Guarantee and Accident Company, Ltd.; That on said day the employee herein, while performing services for the employer, as a laborer on the barge "Koal Kraft" which vessel was moored on the navigable waters of the United States at 97th Street and the Calumet River, fell from the

barge into the river, and was drowned; That notice of injury was given to the employer; That the average annual earnings of the employee at the time of his death amounted to the sum of \$1170.00; That the deceased employee left dependents as follows: Mary Schumann, his widow, 73 born April 28th, 1909, and Jeanette Schumann, minor child, born August 7th, 1937; That the burial and funeral expenses of said deceased's employee's body amounted to the sum of \$462.50, the undertaker being the Brown Funeral Home, and that no part of said expense has been paid; That claimant's attorney Samuel J. Spiegel, 127 N. Dearborn Street, Chicago, Illinois, has performed services in this proceeding of the reasonable value of \$50.00 and is entitled to a lien against the compensation payable to the claimant for said amount.

Upon the foregoing facts the Deputy Commissioner makes the following

Award.

That the employer, South Chicago Coal & Dock Company, and the insurance carrier, London Guarantee & Accident Company, Ltd. shall pay to the claimants, compensation as follows:

To Mary Schumann, claimant and widow herein, at the rate of \$7.875 per week beginning November 1st, 1937; and to Mary Schumann as the natural guardian of Jeanette Schumann, minor child, at the rate of \$2.25 per week beginning November 1st, 1937; accrued compensation from November 1st, 1937 to February 6th, 1938, a period of fourteen weeks, at the rate of \$10.125 per week amounts to \$141.75, all of which is accrued and payable; less the sum of \$50.00 which shall be paid to claimant's attorney Samuel J. Spiegel.

Said employer and insurance carrier shall pay the sum of \$200.00 to the Brown Funeral Home, 95th and Commercial Avenues, Chicago, Illinois, toward the burial and funeral expenses.

74 From and after February 6th, 1938 said employer and insurance carrier shall pay to Mary Schumann, compensation at the rate of \$10.125 per week on behalf of herself and minor child until and unless the Deputy Commissioner shall otherwise direct.

Given under my hand at Chicago, Illinois, this 21st day of February, 1938.

Harry W. Bassett,
Harry W. Bassett,
Deputy Commissioner.

75

EXHIBIT D.

State of Illinois } ss.
County of Cook }

William F. Shean, being duly sworn, upon oath says:

I am employed as investigator by the London Guaranteed and Accident Company, Ltd., one of the plaintiffs in the above cause.

On March 1, 1938, I went to 10850 Avenue J, Chicago and interviewed Mary Schumann, widow of John Schumann, and in answer to my questions then presented to her she did state that she is now living with her parents and does not have sufficient means to maintain a home for herself, and that she is entirely dependent on her parents for her support, as is her infant daughter.

She further stated that she received about \$1000 insurance money on her husband's death, and that she spent it for funeral expenses and other matters, and that it is entirely gone and she has none of it left.

She further stated that she is not employed, has no money whatever, and that her infant child Jeanette is living with her and both of them are being supported by the parents of said Mary Schumann.

I asked her whether she had any money or source of income and she said she had neither.

William F. Shean.

Subscribed and sworn to before me this 3rd day of March,
A. D. 1938.

(Seal)

Lillian Preiss,
Notary Public.

76 And on, to wit, the 13th day of May, 1938, came the Defendant by his attorneys and filed in the Clerk's office of said Court his certain Answer, in words and figures following, to wit:

Filed
May 13,
1938.

77

IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—15968) • •

ANSWER.

Now comes the defendant, Harry W. Bassett, and in Answer to the Bill for Injunction filed herein states as follows:

1. The defendant denies that said John Schumann came to his death as a member of the crew of a vessel but states the fact to be that his death occurred in the course of employment as a laborer and therefore is within the coverage of the Longshoremen's and Harbor Workers' Compensation Act and that whether the death occurred while the vessel was moored or not is immaterial in that said vessel was admittedly in navigable waters at the time of the accident.

2. This defendant denies that said John Schumann came to his death as a member of the crew or as a seaman so as to except him from the Longshoremen's and Harbor Workers' Compensation Act, but on the contrary states that on the date of his death, to-wit: October 31st, 1937 the said John Schumann was drowned in the Calumet River in the State of Illinois while he was a laborer on the Barge "Koal Kraft".

78 3. This defendant admits that the London Guarantee and Accident Company, Ltd. insured the liability of the employer, South Chicago Coal & Dock Company.

4. This defendant admits that proper notice of the injury was given to the employer.

5. This defendant denies that the services of the deceased was that of one of the crew or that he was employed in any way in connection with the navigation of said vessel or that his services were necessary to the navigation of said vessel, but in fact the said John Schumann was a laborer who signed no Ship's Articles; no living quarters were provided for him on the vessel; he was called at his home whenever his services were needed; that while discharging the coal his duty was to keep the coal running in the hoppers up on deck with a pole; that he had no duties to perform while the vessel was on the move; and in general performed no services which would make him a seaman so as to except him from the provisions of the Longshoremen's and Harbor Workers' Compensation Act.

6. Defendant denies that said claim is not within the compensation provisions of the Longshoremen's and Har-

bor Workers' Compensation Act, and denies that said claim for death is not within the jurisdiction or the power of the defendant to administer or apply against either plaintiff.

M. L. Igoe,
Attorney for Defendant.

106 And on, to wit, the 26th day of October, 1938, there was filed in the Clerk's Office of said Court a certain Stenographic Report, in words and figures following, to wit:

Filed
Oct. 26,
1938.

107 • • (Index) • •

108 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—15968) • •

Stenographic Report of the testimony taken at the hearing of the above entitled cause before the Honorable Phillip L. Sullivan, one of the Judges of said Court, on the 7th day of July, A. D. 1938.

Present:

Messrs. McKinney, Folonie & Grear, by Mr. R. J. Folonie, appeared for the plaintiffs;

Mr. David H. Neuman, appeared for the defendant.

109 And thereupon the plaintiffs, to maintain the issues on their part, introduced the following evidence, to wit:

ARTHUR J. SPOTTON, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination by Mr. Folonie.

Q. What is your name?

A. Arthur J. Spotton.

Q. What is your occupation?

A. Master, Steamship Koal Kraft.

Q. How do you spell Koal Kraft?

A. K-o-a-l K-r-a-f-t.

Q. What is the approximate size of the Koal Kraft?

A. The Koal Kraft is 159 feet long, and 36-37.6 in breadth and 10 foot draft.

Q. What business was she engaged in in 1937?

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A. She was in a fuel lightering business.

Q. What did she do?

A. Well she handled—supply was transferred, of fuel, from the dock to the boat there at the mooring.

Q. Did she carry coal generally to vessels engaged in commerce on the Great Lakes?

A. Yes, sir.

110 Q. Were you her master throughout that season of 1937?

A. Yes, sir.

Q. I show you a certificate of inspection issued by the steamship inspectors, is that the certificate of inspection on this ship?

A. Yes, sir.

Mr. Folonie: Will you mark that plaintiff's exhibit 1? (Document marked as requested.)

Mr. Folonie: I offer in evidence this certificate of inspection.

Mr. Neumann: Was this introduced in the original transcript?

Mr. Folonie: No.

Mr. Neumann: I will object to it.

Mr. Folonie: It was agreed before the deputy commissioner that it had a certificate of inspection but it was not produced.

The Court: It will be admitted.

Which said document, so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT 1, and is in words and figures as follows, to wit:

111 Mr. Folonie: Now, captain, I note that the crew is prescribed on this certificate in different waters and in different work the vessel was doing. What waters was this vessel in on the day John Schumann came to his death?

A. Calumet River and harbor.

Q. What is that? I mean what location, where it was on that day, what state?

A. In the State of Illinois.

Q. Was she engaged exclusively in harbor navigation that day?

A. Yes, sir.

Q. What crew did she carry?

A. She carried three seamen, one fireman, captain and engineer.

Q. That was the master, yourself, an engineer, fireman and three seamen?

A. Right.

Q. And was John Schumann one of the seamen that you have mentioned?

A. Yes, sir.

Q. What did he do prior to the date of his death, what did he do in connection with this vessel, what was his business?

A. Why, they do have lines—he got out on the dock and received the line from the boat, and he got on the dock to let go of the lines on the aft end of the boat.

Q. Did he do anything in connection with the firing of the boilers of your vessel?

A. No, sir.

112 Q. Did he have any work to do on the dock with respect to the coal?

A. No, sir.

Q. Were his duties performed entirely on the vessel?

A. Yes, sir.

Q. How long had he been working on this vessel before the date of his death?

A. He went to work on the 5th day of October and was lost the morning of the 31st.

Q. Of the same month?

A. Of the same month, yes.

Q. What do you call a seaman that does work handling the lines such as you mentioned, what do you call him?

A. A deck hand.

Q. Did this vessel go on voyages or did it just work around the harbor?

A. It just worked around the harbor.

Q. Were there any accommodations on the vessel for the crew to sleep?

A. No, sir.

Q. They did their sleeping at home, did they?

A. Yes, sir.

Q. Were they served with their meals on the vessel?

A. No, sir.

Q. They had to make provision for their own food, did they?

A. Yes, sir.

Q. When he worked, did he work continuously, certain hours, or was he subject to call?

113 A. He was subject to call, yes.

Q. How did you call him, by telephone, when you wanted him?

A. By telephone, yes, sir.

Q. In holding himself subject to call, he would come when you wanted him?

A. Yes, sir.

Q. And the work he did was in connection with the activities of this boat in coaling other vessels, is that right?

A. Yes, sir.

Mr. Neumann: If Your Honor please, this is simply a review of the testimony before, of the testimony that is in this transcript.

The Court: It does not do any harm if it is. I can't tell yet because I haven't got the transcript. Go ahead.

Mr. Folonie: Q. Now on the day this man Schumann came to his death, where was the vessel bound for when she left the dock?

A. To fuel the steamer, J. S. Ashley, moored at 103rd Street. It had landed at the dock.

Q. Was that also in this Calumet River?

A. Yes, sir.

Q. And did your crew consist of the persons you have mentioned, that is master, engineer, fireman and three seamen?

A. Yes, sir.

114 Q. And he was one of them?

A. Yes, sir.

Q. When did you miss him?

A. The man was missed—I don't know anything about the man being missed until they arrived at the steamer Ashley at 103rd Street.

Q. When you arrived there you found he was not on board?

A. One of the men reported him missing.

Q. When did you next see John Schumann or his body?

A. It was five days later.

Q. Where did you see his body then?

A. The coast guard fished him out of the river at 95th Street.

Q. Fished out of the water, was he?

A. Yes, sir.

Q. Drowned and dead?

A. Yes, sir.

Q. Where did Schumann perform his duties on this vessel, fore or aft or both?

A. He performed his duties topping the line at the aft end of the boat, and while discharging coal on board the other boat, his duty was to keep the coal flowing in the hoppers. In other words, poking it down.

Q. Were the duties performed by John Schumann while he was on this vessel, those that are ordinarily performed by a deck hand as one of the crew of vessels?

A. Yes, sir.

Mr. Folonie: That is all.

115 *Cross-Examination by Mr. Neumann.*

Q. How long did you say Mr. Schumann was working on this Koal Kraft prior to his death?

A. He was employed on the 5th of October and he was lost on the morning of the 31st of October.

Q. He was hired by you, is that correct?

A. Yes, sir.

Q. Did you hire all the help on this boat?

A. Yes, sir.

Q. What are the requirements of the seamen, the experience required by captains of boats in hiring seamen?

A. Why, there is no experience required on this boat, just the time I guess that he puts in on the boat. He learns the things, and what the boys tell him on the boat, and what the captain, the master, tells him.

Q. Are they classified as seamen right away?

A. Yes, sir.

Q. What are the duties of the seaman on a vessel, a sea-going vessel?

A. There are ordinary and first class seamen. He would be an ordinary seaman.

Q. What are the duties of an ordinary seaman?

A. To do deck work.

116 Q. Will you elaborate on your statement of deck work?

A. Yes, sir.

Q. Tell the court just what you mean by deck work.

A. By deck work, a deck hand is a man that does ordinary work. He handles the line, does odd jobs, painting and cleaning up the boat, keeps the boat in shipshape.

Q. Does the sea-going vessel have laborers?

A. Yes, sir, they call them ordinary seamen.

Q. I mean do they have laborers also?

A. No, sir, the ordinary seaman does that kind of work.

Q. In sea-going vessels the seamen are quartered aboard the boat, is that correct?

A. Yes.

Q. They eat aboard the boat?

A. Yes, sir.

Q. And they are on the payroll all the time, is that correct?

A. Why, yes, sir.

Q. And Mr. Schumann was subject to call at a half hour's or an hour's notice, was that his status, or two hours or three hours?

A. He generally had more notice than that.

Q. How long had he been aboard the boat the day that he was found missing?

A. Why he was aboard the boat from two o'clock 117 in the morning, I guess, two o'clock in the morning. He was ordered out at two o'clock anyway.

Q. Two o'clock in the morning?

A. Yes, sir.

Q. Had you left the dock or pier before he was noticed missing?

A. No, sir.

Q. You were still at the pier?

A. No, we had left it. We had left the pier.

Q. Did Mr. Schumann have anything to do with the navigation of this vessel?

A. No, sir.

Q. The navigation of the vessel was entirely in the hands of the engineer and the fireman, is that correct?

A. No, sir, the master.

Q. The master?

A. Yes, sir.

Q. What are the master's duties?

A. The master's duties were to steer that ship and handle it, and give the signals to handle it.

Q. And the work in connection with the propelling of the vessel is in whose hands?

A. In the engineer's and the fireman's hands.

Q. And you say that the words seaman and deck hand are synonymous?

A. Yes, sir.

Q. Meaning the same thing?

A. Yes, sir.

Q. Are all deck hands seamen?

A. Ordinary seamen, yes, sir.

118 Q. Did you classify him as an ordinary or as a seaman?

A. I classified him as a deck hand.

Q. And his duties as a deck hand were what, again?

A. Handling the lines, take the line from a boat, put it on a piling on the dock, and relieving the pile mooring when the boat was leaving the dock.

Q. Who did the cleaning up of the boat?

A. The deck hands.

Q. And who did the coaling of the other vessels?

A. That was operated by machinery. The deck hands would operate that machinery. That is to load the coal from the Koal Kraft aboard the other vessel.

Q. Was any other work done beside coaling or fueling vessels on this boat?

A. No, sir, not any more than the handling of it and the loading on the boat.

Q. Do you know whether Schumann ever worked on a boat prior to the time he was employed on the Koal Kraft?

A. I think not.

Q. Did he ever have any experience in navigation?

A. I think not, not that I know of.

Q. In other words, you simply hired Schumann to do the manual labor on the boat, is that correct, captain?

A. Right.

Q. You say there were three deck hands on board?

119 A. Yes, sir.

Q. Was there ever a time that you had less or more than three laborers on board the Koal Kraft?

A. Not that I know of. That is the crew that the boat called for.

Q. What was Schumann's pay?

A. Schumann got paid at the rate of sixty cents an hour.

Q. For the actual hours on board the boat?

A. Yes, sir.

Q. He was not paid for the time he was on land or awaiting call?

A. No, sir.

Q. He had to furnish his own meals?

A. Yes, sir.

Q. And would he work every day?

A. No, sir.

Q. How far was this boat away from the dock or pier that you were bound for?

Mr. Folonie: You mean the vessel that was coaled?

Mr. Neumann: To be coaled.

A. Well, the vessel was at 103rd Street. We left at 95th Street. About eight blocks, in the neighborhood of a mile.

Q. And the course you took was through and in a navigable stream, is that right?

A. Right.

Q. What is anything did Mr. Schumann do while the boat was in transit to the boat to be fueled?

120 A. There was nothing for him to do.

Q. His duties were over until they reached the boat in question?

A. Yes, sir.

The Court: Q. Did you have any employees on the boat who were not members of the crew?

A. No, sir.

Q. Irrespective of whether skilled or non-skilled?

A. No, sir.

Mr. Neuman: Q. Do you know what the rules and regulations of the Commerce Department are regarding a boat of this size?

A. Why, we are not allowed to operate more than twelve hours continuously for any twenty-four. That was the idea of this call duty, to avoid— Sometimes our work was in the morning. A boat came in in the morning; we had another one in the evening.

Q. What are the rules and regulations of the Department as to the number of employees aboard a boat of this size?

A. Why, we were supposed to have one master, one engineer, one fireman and three—a crew of six men operating.

Q. A crew of six men?

A. Yes, sir.

Q. Including the master and engineer?

121. A. Yes, sir.

Q. Does the crew include the master when they say six men?

A. Yes, sir.

Q. In other words, you could get along with five men if the rules and regulations of the Department were not such, is that correct?

A. Yes, sir.

Mr. Neuman: That is all.

The Court: Anything else?

Mr. Folonie: That is all.

(Witness excused.)

RAYMOND KERSTEN, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

Direct Examination by Mr. Folonie.

Q. What is your name, please?

A. Raymond Kersten.

Q. Were you one of the crew on the Koal Kraft when John Schumann came to his death?

A. Yes, sir.

Q. What was your job on the vessel?

A. Fireman.

Q. Had you gotten to know John Schumann while he worked on that vessel?

A. Yes, sir.

Q. What was his job, what did he do?

122 A. He was employed as a deck hand to throw off the line, and throw the line to the steamboat we were going to re-fuel, and clean up generally.

Q. Did you see John Schumann on that vessel on the day or night that he came to his death when you left the pier or dock?

A. Yes, sir.

Q. When you got to the vessel you were to coal, was he still on board your vessel?

A. No, sir.

Q. Did you see him disappear?

A. No, sir.

Mr. Neuman: If the Court please, I think it is immaterial whether or not he was noticed or seen to have disappeared. There is no dispute about him being on the boat, the fact he was employed on that boat.

Mr. Folonie: It is purely to bring out, if the court please, that the disappearance occurred in the course of the trip, and after they left the dock, which is the whole purpose of it.

The Court: Go ahead.

Mr. Folonie: Q. Did you work with John Schumann all the time he was on this vessel?

A. Well, yes, sir, on the stern end.

Q. From the time he started until his death?

A. Yes, sir.

123 Q. Did he perform the ordinary duties of a deck hand during that time?

A. Yes, sir.

Q. What did that consist of, what did he do?

A. Well, he let go my line on the dock, and he took the line in, and he threw the line to the steamboat, threw our cable; and he kept the deck cleaned off from all coal scattered all over it.

Q. What did he have to do with taking on or putting off the coal?

A. He was the top man, they call it, that pushed the coal down the hopper, a certain amount of coal, he shoved it down.

Q. Where would he do that work?

A. On the top deck.

Q. Of the Koal Kraft?

A. Yes.

Q. Did he have any duties with respect to the coal when you were putting it on the vessels?

Stenographic Report.

A. Yes, sir.

Q. What did he do, the same kind of work?

A. That is what I talked about, pushed the coal down and kept the deck cleaned there.

Mr. Folonie: That is all.

124

Cross-Examination by Mr. Neuman.

Q. Mr. Kersten, what was the main, the chief duty of John Schnmann on board this boat?

A. I believe he was top man, I believe they call him. He discharged coal to the other steamer.

Q. He was not hired to throw out lines and swab decks?

A. Yes, he would throw lines.

Q. That was not part of his employment?

A. Yes, sir, to keep the deck clean and throw off the lines.

Q. The boat itself is engaged in coaling a vessel, other vessels?

A. Yes.

Q. That is where the owners of the boat receive their compensation from the fueling and coaling of the vessel, is that correct?

A. Yes, sir.

Q. And his main duty was to be the top man, poke down the coal?

A. Also let go the line, which is very important.

Q. How much time is spent in transit from the port, or your port or dock and the vessel to be fueled, in most cases?

A. In most cases forty-five minutes.

Q. Forty-five minutes. How long are you usually 125 at the boat that is being fueled?

A. It depends on the amount of coal he wants, if he wants fifty tons or one hundred.

Q. How long would it take to unload fifty tons?

A. About twenty minutes.

Q. About twenty minutes?

A. Yes.

Q. How many trips did you make a day?

A. Well, it depends on the orders that come in.

Q. When there are no orders the men are relieved?

A. Go home.

Q. They go home?

A. Yes.

Q. Are you subject to call the same as John Schnmann?

- A. Yes, sir.
- Q. How long have you been employed on the boat?
- A. About, almost nine years.
- Q. You have a fireman's license?
- A. There is no license required.
- Q. There is no license required?
- A. No, sir.
- Q. Does the engineer require a license?
- A. Yes, sir.
- Q. When the Koal Kraft reaches the vessel to be fueled, what is the procedure from then on?
- A. Well, we tie up alongside first.
- Q. How long does that take?
- A. About five minutes.
- 126 Q. Do you assist in tying up the boat?
- A. We run the winch, they call it. It is a machine that heaves in the cable and ties it up to the steamboat.
- Q. Does the engineer assist in tying up?
- A. He stays by his engine.
- Q. He does not have anything to do with the throwing of lines?
- A. No, sir.
- Q. Does the master assist in tying up the boat?
- A. Not in tying the lines. He does in directions.
- Q. Then what happens or what is the next step?
- A. Of my particular job?
- Q. No, of the boat itself.
- A. We stay alongside there and we discharge the coal to them and then operate the machinery.
- Q. Do the deck hands operate the machinery?
- A. Yes, sir.
- Q. What does that consist of, that duty?
- A. Just opening the pocket, they call it. There is a door in the pocket. We open it and the coal flows out on the conveyor. They regulate the amount of coal that is dumped on the belt.
- Q. How long had John Schumann been doing this work?
- A. Since the 5th of October, to the 30th.
- Q. How many trips had he made during this period, how many days had he actually worked?
- A. I couldn't answer that either. I didn't keep tab of it.
- Q. How many days did you work during that period?
- A. I haven't got my book here. I couldn't very well tell you.
- Q. Would you say two days, three days, five days?

A. I would say more than that.

Q. Twenty-five days?

A. Approximately twenty-five days.

Q. You were working every day then between the 5th and the 30th?

A. I couldn't say for sure.

Q. Are you still employed on the Koal Kraft?

A. Yes, sir.

Q. Will you repeat the duties of the top man again?

A. Well, letting go my line on the dock, and throwing a heaving line to the steamboat, tying up our boat and the other boat, and then poking the coal down.

Q. How would that coal be poked down?

A. We have a long wooden pole with a speared end, a steel end, a long wooden pole. If a certain amount of coal sticks in the corner of the hopper—it is supposed to go down—he pokes the coal down so it runs down on the belt.

128 Q. When would the cleaning up of this boat take place, Mr. Kersten?

A. After loading.

Q. After loading?

A. After reloading our vessel.

Q. After your vessel was reloaded?

A. Yes, sir. Then the coal would spill on the deck and he cleaned it up.

Q. Your Koal Kraft would be cleaned up?

A. Yes, sir.

Q. That would be when it was moored?

A. Moored at our docks.

Q. Moored at your dock?

A. Yes, sir.

Q. What did the other two deck hands do on board this boat?

A. They kept things cleaned up. Practically the same duty except they did not go on top.

Q. Their work then took place—the actual work done by the deck hands took place at the dock and at the boat to be fueled, is that correct?

A. That is right.

Q. And during the trip over they were idle?

A. Yes, sir.

Mr. Neuman: That is all.

Mr. Folonie: That is all.

(Witness excused.)

Mr. Folonie: I have the steamboat inspector on the way down here, if the Court please. Perhaps coun-

129 sel will admit it and we will not have to wait for him even. I expect to prove by the steamboat inspector, Mr. Peter G. Peterson, Inspector of Hulls, the steamboat inspector for this district, that the certificate of inspection of the Koal Kraft, plaintiff's exhibit 1, was issued under his directions; and that in the case of river boats, which the Koal Kraft would be classed under, their regulations and crew are prescribed for such vessels as recited in this certificate.

Mr. Neuman: No objection.

The Court: All right.

Mr. Folonie: All right, I will accept counsel's admission of my statement as an equivalent of the sworn proof.

Mr. Neumann. I would like to recall, if I may, and ask Captain Spotten another question.

Mr. Folonie: That is quite all right.

ARTHUR J. SPOTTON, recalled as a witness on behalf of the plaintiff, having been previously duly sworn, testified as follows:

Cross-Examination Resumed by Mr. Neuman.

Q. Captain Spotten, at the time that John Schumann was hired, were the other two deck hands or seamen hired?

A. Yes, sir.

130 Q. Were they employed at that time?

A. Yes, sir.

Q. How long had they been employed on the Koal Kraft?

A. Oh, they had been employed on the Koal Kraft for about a year.

Q. Did you hire them?

A. Yes, sir.

Q. Had they been experienced?

A. They had had a year's experience. They were not experienced when they came abroad.

Q. You would not call them firstclass seamen, would you?

A. No, sir.

Mr. Neuman: That is all.

(Witness excused.)

Mr. Folonie: Let me put in some exhibits, and I will close my case and we will be through with all the evidence, and then I don't assume you will have any.

Mr. Neuman: There has been nothing new outside of the record so far aside from that certificate.

Mr. Folonie: If the Court please, I have attached to the bill of complaint claim for compensation signed by Mary Schumann, and I have recited in my bill the answer filed although it is not set out verbatim, and I here produce as plaintiff's exhibit 2 a certified copy of our answer and attached to the bill is also the findings of fact and 131 award of the commissioner, attached also is a transcript of the evidence produced before the deputy commissioner. I have certified copies of those here also, which I can formally offer in evidence. I think it will serve every purpose unless there are objections, if they are considered in evidence, the exhibits attached to the bill of complaint as plaintiff's exhibits, having been so recited by me.

Mr. Neumann: I think I agreed to a stipulation, signed a stipulation to that effect sometime ago.

Mr. Folonie: Yes, counsel has so stipulated with me outside of the record. I will take his verbal stipulation here in court, that they may be so admitted.

The Court: They may be admitted.

Which said exhibits are in words and figures as follows, to wit:

132 Mr. Folonie: We rest.

The plaintiffs here rested their case.

The Court: What do you say about this? I am not familiar with this type of a case, but on this whole question here whether or not he was a member of the crew—

Mr. Folonie: That is all there is to this case.

The Court: Hasn't there been any decision?

Mr. Folonie: Yes.

The Court: I have not time to go into it. I am not familiar with it.

Mr. Neuman: It is an appeal from an examining man like an examining magistrate.

Mr. Folonie: There is one question here whether he is a member of the crew or is not. That is all there is to this case.

The Court: All right, I will hear you tomorrow morning.

(Whereupon the further hearing of the above entitled cause was adjourned to Friday, July 8, 1938, at ten o'clock A. M.)

133 South Chicago Coal & Dock Company, an Illinois Corporation, and London Guarantee & Accident, Ltd.,

Plaintiffs,

vs.
Harry W. Bassett, Etc.,

Defendant.

Before Judge Phillip L. Sullivan.

Friday, July 8, 1938,
Ten o'clock A. M.

Court met pursuant to adjournment.

Present: Same as before.

The Court: All right gentlemen, you haven't any evidence!

Mr. Neuman: Only this, if the Court please, in the event that Your Honor is going to grant their motion for a trial De Novo, at this time, I would like to move that the testimony introduced before the commissioner, the deputy commissioner, the original hearing, be considered part of the testimony or evidence before Your Honor. In other words, I want the record to show that.

Mr. Folonie: The motion is that the evidence I have offered which might be part of what transpired might be considered as evidence here before the court. I have 134 no objection to that.

The Court: All right.

Mr. Folonie: I want to reopen my case just for one point, and that is I failed to offer the certificate of enrollment of the vessel. Counsel has said informally, I think, that the vessel Koal Kraft was a duly licensed vessel of the United States at the time of the occurrence. Is there any question as to that?

Mr. Neuman: No question.

(Arguments of counsel.)

135 The Court: It seems to me from the facts in this case, the one witness who testified yesterday, he had to have a crew irrespective of what training, and this man was on this boat doing the work he did, and irrespective of his position, I think he was a member of the crew, and there will be a finding as to that, and the conclusions of law will be held.

Mr. Neuman: If the court please, may we submit briefs on this question?

The Court: No, I think I have heard you. There is no need of delaying it.

Mr. Folonie: I am satisfied we have brought to the attention of the court all the cases there are, that have arisen under this act. We have run down the citations. These are the ones we find on the materiality.

Mark that "held" in the margin.

The Court: Mark it "held" or "refused".

Mr. Folonie: I believe that is the practice, Your Honor.

The Court: All right, gentlemen.

Mr. Neuman: Let the record show exception is made to the findings.

101 NARRATIVE OF EVIDENCE AND PROCEEDINGS AT THE TRIAL OR HEARING.

And on the hearing of said cause the counsel for plaintiffs stated that the parties had, in writing, stipulated that Exhibits "A," "B" and "C," attached to the Bill of Complaint, might be offered in evidence by either party and received in evidence without further proof of correctness and authenticity, and without prejudice to rights of the plaintiffs or defendant to offer such other or further competent evidence as they should see fit.

Counsel for defendant stated this was a correct statement of the stipulation of the parties and, thereupon, said Exhibits "A", "B" and "C", attached to the Bill of Complaint, were then and there offered and received in evidence by the Court (not here again reproduced).

Thereupon counsel for appellees offered his statement as equivalent to evidence that the plaintiffs had filed their answer before the Commissioner, as in the Bill of Complaint alleged, which counsel for appellant then and there admitted.

Thereupon appellees presented witness ARTHUR J. SPOTTON, who testified as follows:

I am master of the Steamer "Koalkraft" and was at the time of the death of John Schumann. The "Koalkraft" was a vessel of the United States, 174 feet long and 40 feet beam, which, under the regulations of the Government Vessel Inspectors, was required to have a crew of master,

102 chief engineer, fireman, and three deckhands. The same thing was required under our enrollment and the Certificate of Inspection produced and bearing the signature of the Inspector of Hulls and Inspector of Boilers; which provides:

The steam vessel "Koalkraft", a vessel propelled by steam, of Chicago, Illinois, has been inspected and is of 376 gross tons. She "may be operated not to exceed 12 hours out of any 24 hours, with 1 licensed master and pilot, 1 licensed chief engineer, 3 seamen, 1 fireman."

This was the inspection certificate in force at the time of the death of Schumann.

Schumann was engaged on the vessel as a deckhand, and all his duties were on the vessel. He at no time did any work except on board the ship, and his work consisted of making fast and loosening lines; keeping the vessel and her decks clean and polished; assisting the engineer and fireman in firing the engine; and when the vessel was coaling other vessels (which was her business), the coal being taken on from the dock, running in a chute, would require that he stand on the deck of the vessel and punch it with a stick from time to time to keep it running freely, and perform similar duty when the vessel was delivering her coal to another vessel which was being coaled.

The "Koalkraft" was, at the time, working in the harbor of the Calumet River in Illinois, and her duties were entirely within the harbor at that time in transporting coal from a dock to the vessel being coaled.

Schumann was on board when we cast off the lines at the dock, and when we reached the vessel to be coaled he was missing. I saw his body some days later when it was found in Calumet Harbor.

103. On cross-examination, witness stated that neither Schumann nor any other member of the crew ate or slept on board the "Koalkraft" and that when a vessel was to be coaled they were called by telephone and reported for duty.

On question to the witness whether it was not a fact that Schumann was only a laborer, witness stated that he performed the duties ordinarily exercised by a deckhand, and that the work of such deckhand was, in the main, laboring work, including the making and loosening of lines and other work to which they might be put on board the vessel.

Thereupon the plaintiffs produced PETTER J. PETTERSEN, and counsel for plaintiffs stated in open court he expected to prove by this witness that he is the Vessel Inspector of the United States; that he issued the Certifi-

cate of Inspection to this vessel, and that as part of her crew, to permit her to run, she was required to have a master, engineer, fireman, and three deckhands, and that in the absence of such a crew she would not be permitted to navigate.

Counsel for plaintiffs asked counsel for defendant if he would stipulate that the witness would so testify and accept the statement as sworn testimony of the witness, and defendant's counsel stated he would so stipulate.

Thereupon the plaintiffs produced witness RAYMOND KESSLER, who testified as follows:

I was fireman on the "Koalkraft" on October 31, 1937, when John Schumann came to his death. He was on board the "Koalkraft" after we had left the dock and our lines were clear. I missed him before we reached the vessel 104 we were coaling. He evidently fell overboard. It is not correct to state that he fell into the water while the "Koalkraft" was still moored to the dock. I saw his body when it was recovered some days later and it was found in Calumet Harbor. I worked with him for some weeks. All his duties were performed on the vessel and none on shore. He was a deckhand, doing deckhand work.

Thereupon plaintiffs' counsel stated:

"We have here the answer of plaintiffs' to the employee's claim for compensation as filed in the office of the Deputy Commissioner before the hearing had before the Commissioner."

The material part of such answer so presented, offered and received in evidence, is as follows:

"It is denied that both the employer and employee were subject to the Longshoremen's and Harbor Workers' Compensation Act at the time of the alleged injury."

The foregoing was all the evidence produced or received at the hearing of the above cause.

105 The foregoing narrative of testimony, evidence and proceedings at the trial or hearing is filed on behalf of plaintiffs in connection with designation of record upon appeal to the Circuit Court of Appeals, and I do further state that the above case was stenographically reported by reporters for both plaintiffs and defendant on the trial, and the foregoing narrative is a fair narrative statement of all evidence produced on the trial.

Robert J. Folonie,
Attorney for Plaintiffs.

138

PLAINTIFFS' EXHIBIT 1.

(Covered by certificate filed Dec. 6, 1938.)

This Certificate Expires March 20th, 1938.

UNITED STATES OF AMERICA.

DEPARTMENT OF COMMERCE.

Bureau of Marine Inspection and Navigation.

Boiler mountings and studs examined on March 20, 1937
by U. S. Local Inspectors, Chicago, Ill.

PGP

W. N.

Certificate of Inspection.

For Steam or Motor Vessel.

**State of Illinois
District of Chicago, Ill.**

Freight (Fuel Lighter) Steam Vessel Koalkraft.

Application in writing having been made to the undersigned, Inspectors for this District, to inspect the above-named vessel propelled by steam, of Chicago, in the State of Illinois whereof South Chicago Coal & Dock Company is owner, and Arthur J. Spotton is Master, said inspectors, having completed the inspection of the vessel on the 20th day of March, 1937, Do Certify that the said vessel was built at Chicago, in the State of Illinois, in the year 1913; rebuilt in the year 1925; that the Hull is constructed of steel; and, as shown by official records, is of 376 gross tons; that the said vessel has _____ Staterooms and _____ Berths, and is allowed to carry _____ passengers, viz.: _____ First cabin, _____ Second cabin, and _____ Deck or Steerage Passengers.

Included in the entire crew hereinafter specified and designated there must be 1 certificated lifeboat men. May be operated not to exceed 12 hours but of any 24 hours with 1 licensed master and pilot, 1 licensed chief engineer, 3 seamen, 1 fireman. When navigating nighttime one of the crew must be on watch in or near the pilot house besides the regular pilot on watch. When navigating under this endorsement on route between Calumet Harbor, Ill.

and Indiana Harbor, Ind., 2 of the seamen required must be able seamen and one additional fireman must be carried. Also is required to carry a full complement of licensed officers and crew, consisting of _____ Master, 1 Master and Pilot, 1 First Class Pilot, _____ Chief Mate, _____ Second Mate, _____ Third Mate, _____ Inland Mate, _____ Chief Mate and Pilot, _____ Second Mate and Pilot, _____ Third Mate and Pilot, _____ Inland Mate and Pilot, _____ Quartermaster, 4 Able Seamen, 2 Seamen, _____ Apprentices, _____ Deck Hand, 1 Chief Engineer, 1 First Assistant Engineer, _____ Second Assistant Engineer, _____ Third Assistant Engineer, _____ Junior Engineer, _____ Water Tender, _____ Oiler, 3 Firemen, _____ Coal Passer, _____ Wiper, _____ Watchmen, and also _____ persons when needed in Steward's and other departments not connected with the navigation of the vessel; that the said vessel is provided with 2 Single Vert. Non-Condensing Engine of 14, 14 inches diameters of cylinders and 3½ feet stroke of piston, and 1 Boiler, 12 feet in length and 114 inches in diameter, made of lawful steel, in the year 1906, rebuilt in the year 1_____. The said vessel is permitted to navigate, for one year, the waters of the Calumet River and Harbor, also Indiana Harbor and River, and may be navigated between South Chicago and Indiana Harbor with the aid of a tug. between _____, and touching at intermediate ports, a distance of about _____ miles and return.

We Further Certify that the said vessel at the date hereof is, in all things, in conformity with the laws governing the Bureau of Navigation and Steamboat Inspection and the Rules and Regulations of the Board of Supervising Inspectors.

The Following Particulars of Inspection Are Enumerated, Namely:

Anchors,	No. 2
Cables,	No. 1
Has signal lights Yes.	7" x 11"
Metal lifeboats (198 c. f.)	No. 2
Wooden lifeboats.....	No. _____
Working boat.....	No. _____
Collapsible lifeboats.....	No. _____
Every lifeboat has equipment in accordance with the rules. Yes.	
Life rafts (15 persons)	No. 1
Life preservers for adults.....	No. 13
Life preservers for children.....	No. _____

Auxiliary life-saving appliances, No. and kind
 2 Ring life buoys, 2 Luminous ring life buoys.
 Has line-carrying projectiles, and means of
 propelling them _____
 Fire Extinguishers..... No. 3
 Portable hand fire pumps..... No. _____
 Double-acting hand fire pumps..... No. 1
 Fire hose, total length of..... 150 feet.
 Fire buckets No. _____
 Water barrels No. _____
 Water tanks No. _____
 Axes No. 4
 Date when shaft was last drawn.....

Main Boilers.

Boiler plate:

Thickness of715"
 Tensile strength of 65,000#
 Record in local inspectors' office at Mil-
 waukee, Wis.

Boiler shell drilled May 15, 1932.

Thickness of plate found..... .720"

Longitudinal seams triple riveted.

Holes drilled.

Maximum steam pressure allowed 140 lbs.
 Hydrostatic pressure applied 175 lbs.
 Main steam pipe, thickness of369"
 Feed pumps for blrs..... 2
 Steam fire pumps, double-acting..... No. 1

Donkey Boilers.

No. None When built, 1

Diameter of

Thickness of plate

Tensile strength of plate

Record in local inspectors' office at

Maximum steam pressure allowed to donkey boiler, _____
 pounds.Hydrostatic pressure applied to donkey boiler, _____
 pounds.

Petter G. Pettersen,
Acting Inspector of Hulls.
 William Nicholas,
Inspector of Boilers.

State of Illinois, } ss.
County of Cook. }

Subscribed and sworn to before me this 24th day of March, 1937, by Petter G. Pettersen, Acting Inspector of Hulls, and by William Nicholas, Inspector of Boilers.

Arthur E. Schutt,
(Seal) Notary Public.

My commission expires May 7, 1939.

Office of U. S. Local Inspectors,

District of (Port) Chicago, Ill., Mar. 24, 1937.

We Hereby Certify that the above certificate is a true copy of the original issued by this office to the vessel named herein.

Petter G. Pettersen,
(Acting) Inspector of Hulls.
William Nicholas,
Inspector of Boilers.

On vessels of over 25 gross tons, the original certificate must be framed under glass and posted in a conspicuous place in the vessel where it will be most likely to be observed by passengers and others. On vessels of not over 25 gross tons, the original certificate must be kept on board to be shown on demand. (Section 4423, Revised Statutes.)

Steam pleasure yachts are forbidden to carry merchandise or passengers for pay, unless upon change of character by the Inspectors of the Bureau of Navigation and Steamboat Inspection.

79 And on, to wit, the 8th day of July, 1938, there was filed in the Clerk's office of said Court a certain Conclusions of Law, in words and figures following, to wit:

80 IN THE DISTRICT COURT OF THE UNITED STATES.

* * * (Caption—15968) * *

Come now the plaintiffs in the above cause, by McKinney, Folonie & Grear, and respectfully present Conclusions of Law, hereto appended, and pray that the Court may hold the same and adopt them, and each of them, and mark the same, and each of them, "Held."
(Held)

McKinney, Folonie & Grear,
Attorneys for Plaintiffs.

81

CONCLUSIONS OF LAW.

Filed
July 8,
1938.

1.

Under the evidence herein, the court finds as a matter of law that the "Koal Kraft" was required to have a crew of thirteen men, but was permitted to operate not to exceed twelve hours out of any twenty-four, with a crew of one licensed master and pilot, one licensed chief engineer, three seamen, and one fireman.

82

2.

Plaintiff, South Chicago Coal & Dock Company, is not liable for the payment of any compensation under the "Longshoremen's and Harbor Workers Compensation Act" (44 Statutes, 1424; 33 USCA, Chap. 18), for the death of John Schumann.

83

3.

Under the law, a member of the crew of a vessel is not, nor is the owner of such vessel, subject to the jurisdiction of the Commissioner or Deputy Commissioner under "Longshoremen's and Harbor Workers Compensation Act," justifying any award of compensation for the death of a deck hand, a member of the crew, and no jurisdiction existed in the Deputy Cmmisioner to make any award of compensation for the death of John Schumann.

Approved:-

Philip L. Sullivan,
Judge.

84. And on, to wit, the 8th day of July, 1938, there was filed in the Clerk's office of said Court a certain Findings of Fact, in words and figures following, to wit:

Filed
July 8,
1938.

85. IN THE DISTRICT COURT OF THE UNITED STATES.

* * * (Caption—15968) * *

Come now the plaintiffs in the above cause, by McKinney, Folonie & Grear, their attorneys, and respectfully request that the Court make, hold and place on file Findings of Fact, and plaintiffs herewith submit proposed Findings of Fact and request that the Court may mark them, and each of them, "Held" and place the same on file as part of the record in said cause.

McKinney, Folonie & Grear,
Attorneys for Plaintiffs.

FINDINGS OF FACT.

1.

On October 31, 1937, John Schumann came to his death by drowning in the Calumet River while employed by the plaintiff, South Chicago Coal & Dock Company, on its vessel, the "Koal Kraft."

2.

The drowning of John Schumann occurred by reason of his being lost from the vessel, "Koal Kraft," while it was navigating the Calumet Harbor and River, navigable waters of the United States.

3.

John Schumann, at the time of his being lost, was employed by the plaintiff, South Chicago Coal & Dock Company, as a deck hand on the vessel "Koal Kraft," and as such his duties consisted in making lines fast, loosing them, keeping the vessel clean, and various duties incident to fueling vessels, in which trade the said vessel was at that time engaged.

4.

John Schumann, during his employment by the plaintiff, South Chicago Coal & Dock Company, performed the duties of a deck hand aboard the vessel "Koal Kraft" and at the time of his being lost therefrom, the said vessel was being navigated in the Calumet River between the plaintiff's (South Chicago Coal & Dock Company) dock at 95th Street and the Calumet River, north of the 95th Street bridge in Cook County, Illinois, and the vessel "Ashley", then lying at 104th Street and the Calumet River in said Cook County, Illinois. John Schumann was lost from the "Koal Kraft" after it had passed to the south of the 95th Street bridge and before it reached the "Ashley."

5.

John Schumann, at the time of his being lost from the "Koal Kraft", was a seaman employed thereon as a deck hand.

6.

On October 31, 1937, the said vessel was being operated not to exceed 12 hours of that-day, and the members of the crew, at the beginning of the voyage during which John Schumann was lost overboard, were
88 Arthur J. Spotton, Master; Harry Zivney, Engineer; John Schumann, Joe Kete and George Gornick, deck hands; and Raymond Kersten, Fireman.

7.

John Schumann, at the time of his being lost from the vessel "Koal Kraft," was a member of the crew of that vessel. (Held)

8.

John Schumann, at the time of his coming to his death by drowning, was not within the coverage of the "Longshoremen's and Harbor Workers Compensation Act." (44 Statutes 1424; 33 USCA Chap. 18.)

9.

The steamship "Koal Kraft" was, at the time of the death of John Schumann, a vessel of the United States engaged in harbor navigation, with a crew and ship's papers.

Approved:

Philip L. Sullivan,
Judge.

89 And afterwards, to wit, on the 8th day of July, 1938, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Philip L. Sullivan, District Judge, appears the following entry, to wit: Decree.

90 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—15968) • •

DECREE.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz:

1. The preliminary injunction or injunctional order, heretofore entered in this cause on the 8th day of March, 1938, staying the payment of the amounts prescribed and required by the award of the defendant, theretofore made under the terms and provisions of the "Longshoremen's and Harbor Workers Compensation Act," on account of the death of John Schumann, to the Brown Funeral Home, Samuel J. Spiegel, and Mary Schumann, for her own use and for the use and benefit of Jeanette Schumann, and restraining the defendant from enforcing the payment of those amounts to the persons above named, be and the same hereby is made permanent and perpetual against the said defendant.

2. The payments made by the plaintiffs to Mary Schumann, for her own use and for the use and benefit of Jeanette Schumann, in accordance with the permission granted in said order of March 8, 1938, shall not be recovered by the plaintiffs from the said Mary Schumann; nor shall the plaintiffs hereafter make or be required to make any such further payments pending any appeal by the defendant herein from this decree to the United States Circuit Court of Appeals or to the United States Supreme Court or in any otherwise.

3. The award of compensation, heretofore made on February 21, 1938 by the defendant, as Deputy Commissioner of United States Employees' Compensation Commission, Tenth Compensation District, under the terms and provisions of the "Longshoremen's and Harbor Workers Compensation Act," to be paid by the plaintiffs on account of the death of John Schumann to the Brown Funeral Home, Samuel J. Spiegel, and Mary Schumann, for her own use and for the use and benefit of Jeanette Schumann, be, and the same is, hereby vacated and set aside and held for naught.

4. Defendant, his agents, servants, or anyone acting by, through or for him, are further permanently restrained and enjoined from in anywise attempting to enforce, or enforcing, payments of the amounts prescribed and required to be made by the plaintiffs by the said award of compensation made by the defendant on February 21, 1938, under the terms and provisions of the "Longshoremen's and Harbor Workers Compensation Act," on account of the death of John Schumann.

Enter:

Philip L. Sullivan,
District Judge.

92 And on, to wit, the 6th day of October, 1938, came <sup>Filed
Oct. 6.
1938.</sup> the Defendant by his attorneys and filed in the Clerk's office of said Court his certain Notice of Appeal, in words and figures following, to wit:

93 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

• • (Caption—15968) • •

NOTICE.

Notice is hereby given that Harry W. Bassett, Deputy Commissioner of United States Employees Compensation Commission, Tenth Compensation District, defendant above-named, hereby appeals to the United States Circuit Court of Appeal for the Seventh Circuit from the decree filed and entered in this action on July 8, 1938.

M. L. Igoe,

Attorney for appellant, Harry W. Bassett.

Address:

826, United States Court House,
Chicago, Illinois.

October 6, A. D. 1938.

96 And on, to wit, the 12th day of October, 1938, came <sup>Filed
Oct. 12.
1938.</sup> the Defendant by his attorneys and filed in the Clerk's office of said Court his certain Statement of Points, in words and figures following, to wit:

97 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

• • (Caption—15968) • •

STATEMENT OF POINTS.

Now comes the said defendant-appellant in the above entitled cause, by Michael L. Igoe, United States Attorney for the Northern District of Illinois, his attorney, and filed the following Statement of Points upon which he will rely in the prosecution of the appeal petitioned for in said

cause from the decree of this Court entered on the 8th day of July, A. D. 1938:

First. That the Court erred in granting to the plaintiffs herein a trial de novo.

Second. That the Court erred in holding plaintiffs' findings of fact and conclusions of law that the deceased, John Schumann, was a member of the crew of the vessel on which he was working.

Third. That the Court erred in refusing to review the transcript of record of the hearing and testimony taken in the hearing before the Deputy Commissioner of the United States Employees Compensation Commission, Tenth Compensation District.

98 Fourth. That the Court erred in not holding as final the Deputy Commissioner's conclusions as to facts, which were reasonably supported by evidence, introduced in a hearing had in accordance with law.

Fifth. That the Court erred in setting aside the Deputy Commissioner's award.

M. L. Igoe,
United States Attorney,
Attorney for defendant-appellant.

Dated at Chicago, Illinois, this 12th day of October, A. D. 1938.

Filed
Oct. 12,
1938

94 And on, to wit, the 12th day of October, 1938, came the Defendant by his attorneys and filed in the Clerk's office of said Court his certain Designation for Record, in words and figures following, to wit:

95 IN THE DISTRICT COURT OF THE UNITED STATES
OF AMERICA.

• • (Caption—15968) • •

APPELLANT'S DESIGNATION FOR RECORD.

To: Henry W. Freeman, Clerk of the United States District Court for the Northern District of Illinois, Eastern Division:

Please prepare record for defendant's appeal to the United States Circuit Court of Appeals, Seventh Circuit, said record to consist of copies of the following documents:

1. Plaintiff's petition for injunction.

2. Defendant's answer.
3. Plaintiff's conclusions of law and findings of fact.
4. Final decree of court dated July 8, 1938.
5. Defendant's notice of appeal.
6. Appellant's statement of points.
7. Appellant's designation for record.

M: L. Igoe,
Michael L. Igoe,
United States Attorney.

99 And on, to wit, the 14th day of October, 1938, came
the Plaintiffs by their attorneys and filed in the Clerk's
office of said Court their certain Designation for Record
together with Narrative of Evidence and Proceedings at
the Trial or Hearing, in words and figures following, to
wit:

Filed
Oct. 14,
1938.

100 IN THE DISTRICT COURT OF THE UNITED STATES
OF AMERICA.

* * * (Caption—15968) * * *

APPELLEES' DESIGNATION FOR RECORD.

Appellees designate for the record, to be transmitted to
the United States Circuit Court of Appeals, the narrative
statement of the evidence and proceedings at the trial, which
appellees say was stenographically reported, and pray that
the appellant may be required to file two copies of the Re-
porter's transcript of the evidence or proceedings if ap-
pellant be not content with narrative herewith presented.

Appellees attach hereto a narrative of the testimony, evi-
dence and proceedings at the trial in District Court and
pray that the same may be included in the record.

Robert J. Folonie,
Attorney for Appellees.

Certificate of Clerk.

136 Northern District of Illinois } ss.
Eastern Division

I, Henry W. Freeman, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Designations filed in this Court in the cause entitled South Chicago Coal & Dock Company, an Illinois corporation, and London Guarantee & Accident Company, Ltd., vs. Harry W. Bassett, Deputy Commissioner of United States Employees' Compensation Commission, Tenth Compensation District, Equity No. 15968, as the same appear from the original records and files thereof now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 14th day of November, A. D. 1938.

Henry W. Freeman,

(Seal)

Clerk.

137 IN THE DISTRICT COURT OF THE UNITED STATES.

For the Northern District of Illinois,

Eastern Division.

South Chicago Coal and Dock Company, an Illinois corporation, and London Guarantee and Accident Compan., Ltd.,

vs. Harry W. Bassett, Deputy Commis-
sioner of United States Employees
Compensation Commission, Tenth
Compensation District.

Equity No. 15968.

I, Henry W. Freeman, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a copy of the Certificate of Inspection for the vessel Koal Kraft, issued on March 24, 1937 by the Bureau of Marine Inspection and Navigation of the Department of Commerce of the United States of America, which was offered and received in evidence as Plaintiffs' Exhibit Number 1 upon the trial of

this cause before the Honorable Philip L. Sullivan, one of the Judges of the District Court of the United States for the Northern District of Illinois, and which is hereby certified to the Clerk of the Circuit Court of Appeals as an Exhibit in this cause to be incorporated in the report of proceedings and to become a part of the record on appeal in this cause.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 5th day of December, A. D. 1938.

Henry W. Freeman,

Clerk,

(Seal)

By Edward E. Douglas,
Acting Clerk.

139 Endorsed: Filed Dec 6, 1937, Frederick G. Campbell, Clerk.

140 IN THE UNITED STATES CIRCUIT COURT OF APPEALS

Filed
Dec. 16,
1938.

For the 7th Circuit.

South Chicago Coal and Dock Company, an Illinois corporation, and London Guarantee and Accident Company, Ltd.,

Plaintiffs-Appellees,
vs.

Harry W. Bassett, Deputy Commissioner of United States Employees Compensation Division, Tenth Compensation District,

Defendant-Appellant.

} Number 6808.

STIPULATION.

It Is Hereby Stipulated and Agreed by and between the parties hereto, by their respective attorneys, that the document heretofore certified by the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, to be Exhibit Number 1, and being a copy of a Certificate of Inspection for the vessel Koal Kraft, issued on March 24, 1937 by the Bureau of Marine Inspection and Navigation of the Department of Commerce of the United States of America, was introduced in evidence

Stipulation.

as plaintiffs' Exhibit Number 1 upon the trial of this cause, and that it may be filed as such Exhibit with the Clerk of the United States Circuit Court of Appeals for the 7th District as a part of the evidence, as matter omitted from the evidence and proceedings at the trial, and may be made a part of the record on appeal in this cause and printed in the transcript of the record in this cause.

Robert J. Folonie,
Attorney for Plaintiffs-Appellees..
William J. Campbell,
Attorney for Defendant Appellant.

Endorsed: Filed Dec. 6, 1937, Frederick G. Campbell,
Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 78, inclusive, contain a true copy of the printed record, printed under my supervision and filed on the twenty-eighth day of December, 1938, upon which the following entitled cause was heard and determined:

South Chicago Coal & Dock Company, an Illinois Corporation, and London Guarantee and Accident Company, Ltd.,

Plaintiffs-Appellees,

vs.

Harry W. Bassett, Deputy Commissioner of United States Employees Compensation Commission, Tenth Compensation District,

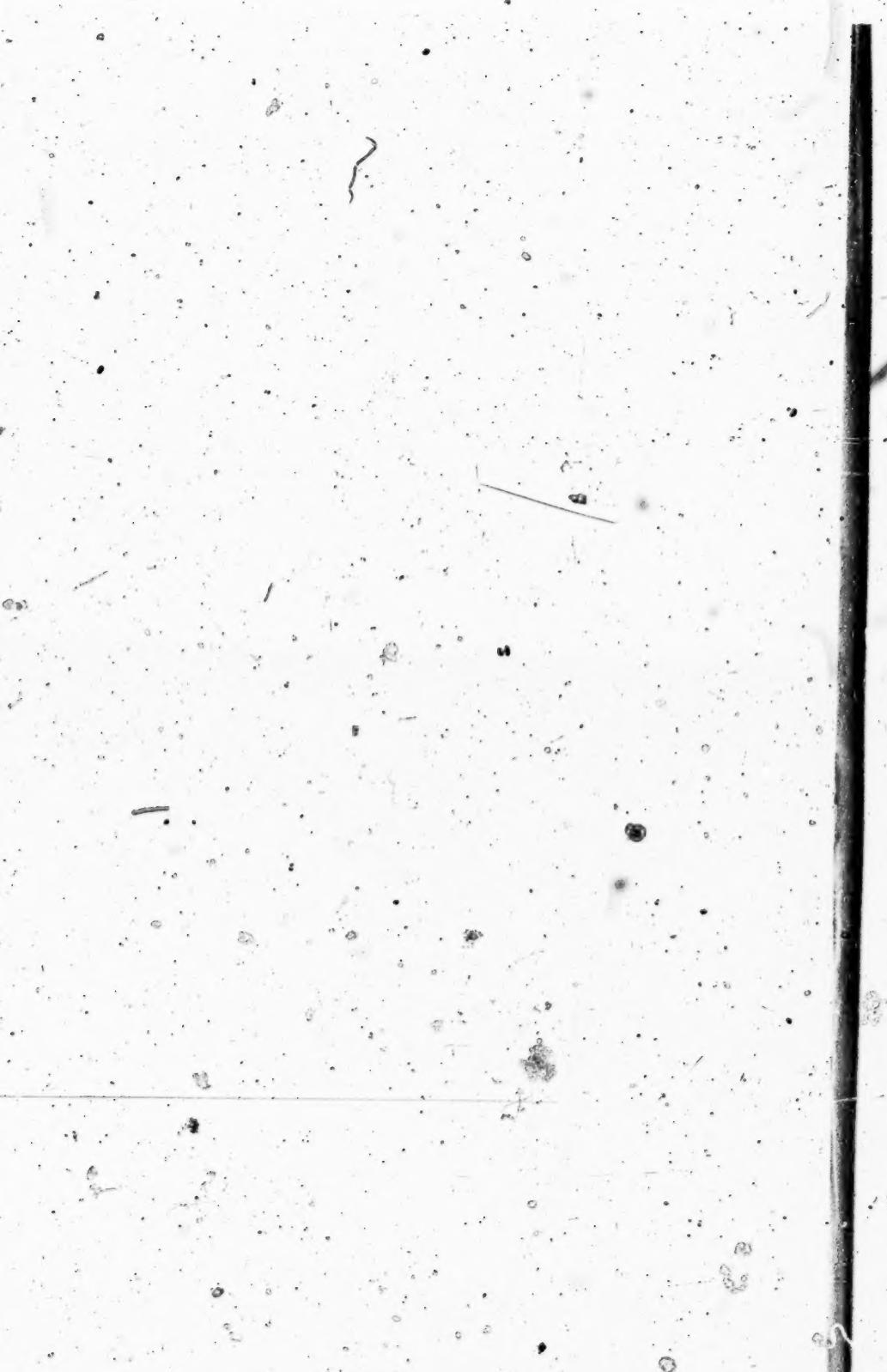
Defendant-Appellant,

No. 6808, October Term, 1938; as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 17th day of July A. D. 1939.

(Seal)

Frederick G. Campbell,
Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.



At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, held in the City of Chicago and begun on the fourth day of October, in the year of our Lord one thousand nine hundred and thirty-eight, and of our Independence the one hundred and sixty-third.

South Chicago Coal & Dock Company, an Illinois Corporation, and London Guarantee and Accident Company, Ltd.,

Plaintiff-Appellee,

6808

vs.

Harry W. Bassett, Deputy Commissioner of United States Employees Compensation Commission, Tenth Compensation District,

Defendant-Appellant.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

And, to-wit: On the seventeenth day of November, 1938, there was filed in the office of the Clerk of this Court, an appearance of counsel for Appellant, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

No. 6808.

October Term, 1938.

South Chicago Coal and Dock Company, *et al.*,

vs.

Harry W. Bassett, Deputy Commissioner, etc.

The Clerk will enter my appearance as counsel for Appellant.

M. L. Igoe,
United States Attorney.

Endorsed: Filed November 17, 1938. Frederick G. Campbell, Clerk.

Appearance for Appellee.

And afterwards, to-wit: On the nineteenth day of November, 1938, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellees, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

No. 6808.

October Term, 1938.

South Chicago Coal and Dock Company, *et al.*,

vs.

Harry W. Bassett, Deputy Commissioner, etc.

The Clerk will enter my appearance as counsel for appellee.

Robert J. Folonie,
105 W. Adams Street,
Chicago, Illinois.

Endorsed: Filed November 19, 1938. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the sixth day of December, 1938, there was filed in the office of the Clerk of this Court, a Stipulation as to Plaintiff's Exhibit 1, which said Stipulation is not copied here as the same appears on pages 77 and 78 of the printed record in this cause, certified herewith under a separate certificate.

And on the same day, to-wit: On the sixth day of December, 1938, there was filed in the office of the Clerk of this Court, a Certified Copy of Plaintiff's Exhibit 1, which said Exhibit is not copied here as the same appears on pages 65 to 68 inclusive of the printed record in this cause, certified herewith under a separate certificate.

And afterwards, to-wit: On the twenty-fourth day of April, 1939, the following further proceedings were had entered of record, to-wit:

Monday, April 24, 1939.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.

Hon. J. Earl Major, Circuit Judge.

Hon. Walter E. Treanor, Circuit Judge.

South Chicago Coal and Dock Company, et al.,

Plaintiffs-Appellees,

6808

vs.

Harry W. Bassett, Deputy Commissioner, etc.

Defendant-Appellant.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel and this cause comes on to be heard on the transcript of the record and briefs of counsel and on oral argument by Mr. David H. Neuman, counsel for appellant, and by Mr. Robert J. Folonie, counsel for appellee, and the Court having heard the same takes this matter under advisement.

And afterwards, to-wit: On the eleventh day of May, 1939, there was filed in the office of the Clerk of this Court, the Opinion of the Court, which said Opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

No. 6808.

October Term, 1938, April Session, 1939.

SOUTH CHICAGO COAL & DOCK COMPANY, an Illinois corporation, and LONDON GUARANTEE AND ACCIDENT COMPANY, LTD.,

Plaintiffs-Appellees.

HARRY W. BASSETT, Deputy Commissioner of United States Employees Compensation Commission, Tenth Compensation District,

Defendant-Appellant.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

May 11, 1939.

Before EVANS, MAJOR, and TREANOR, *Circuit Judges.*

EVANS, *Circuit Judge.* This appeal is from an injunction issued by the District Court against the enforcement of a deputy commissioner's award under the Federal Longshoremen's Compensation Act, to the widow and infant daughter of deceased, who was drowned, October 31, 1937, in the Calumet River, while working on a fueling boat, the Koal Kraft.

Section 3 of the Longshoremen's Act excepts from its operation a "member of a crew." The deputy commissioner, after a full hearing, found deceased was *not* a "member of a crew." On the trial *de novo* in the District Court, the court found deceased *was* a member of a crew. The evidence taken at both hearings was similar.

Was the deceased's status as seaman or longshoreman a "jurisdictional, fundamental fact"? If so, then the District Court must pass on the issue, upon evidence adduced

before it. *Crowell v. Benson*, 285 U. S. 22. If it is not fundamental and jurisdictional, the deputy commissioner makes the finding which is conclusive if supported by evidence. *Voehl v. Indemnity Ins. Co.*, 288 U. S. 162.

Section 3 (33 U. S. C. A. Sec. 903) provides:

"(a) Compensation shall be payable under this chapter in respect of * * * death of an *employee*, but only if the * * * death results from an injury occurring upon the *navigable* waters of the United States * * *. No compensation shall be payable in respect of * * * death of—

"(1) A master or member of a crew * * *

"(2) * * *

"(b) No compensation shall be payable if the injury was occasioned solely * * * by the willful intention of the employee to * * * kill himself * * *."

Section 919 provides for the filing of the claim with the Commissioner who "shall have full power and authority to hear and determine all questions in respect of such claim." Section 920 provides that in "any proceeding for the enforcement of a claim for compensation it shall be presumed, in the absence of substantial evidence to the contrary—(a) that the claim comes within the provisions of the act * * *."

The Facts. The vessel, the Koal Kraft, on which deceased was employed, was used solely for fueling other vessels. It operated about eight months a year in the territory of the Calumet River (concededly a navigable water). It supplied coal to other vessels on their order, each operation consuming only a couple of hours. It had no sleeping or eating quarters. Its certificate of inspection required that "Included in the entire *crew* hereinafter specified and designated there must be 1 licensed master and pilot, 1 licensed chief engineer, 3 seamen, 1 fireman." If deceased were counted as a member of the crew, the full complement of the ship was present. Otherwise not.

Deceased had been in the employ of appellee from October 5th to the 31st, only, a total of 269 hours, at an hourly wage of sixty cents. He was paid semi-monthly—in all \$161.40. His chief task was in facilitating the flow of coal from his boat to the vessel being fueled—removing obstructions to the flow with a stick. He performed such additional tasks as throwing the ship's rope in releasing or making the boat fast. He performed no navigation duties. He occasionally did some cleaning of the boat. He did no work

while the boat was en route from dock to the vessel to be fueled.

Pertinent excerpts from the record relative to deceased's duties are set forth in the margin.*

"Q. The Captain, testifying before the Deputy Commissioner:

"Q. And among the deckhands you claim the deceased was one? A. Yes, sir.

"Q. Those, with yourself, constituted the crew of this vessel? A. Yes, sir.

"Q. Can you tell me what Schumann's duties were while he was working on this boat? A. Why, he was a deck hand and he did general deck work. He handled lines, got on the dock and took the stern line and made it fast and on leaving the dock he threw the stern line off the dock.

"Q. Did he assist the fireman at any time? A. Why, yes, they were all willing to take an interest in learning to fire so in case the fireman got sick we could have a man to replace him.

"Q. Under what status was he paid? I mean by that, was he paid as a seaman or sailor or deck hand? A. He was paid as a deck hand, as a member of the crew of the boat Koal Kraft.

"Q. He took orders solely from you, is that right, Captain? A. Yes, sir.

"Q. You say he worked with the fireman on the day he was injured? A. Yes, Sir. That is, he handled the line. The fireman ran the winch that operates the line and he passed the line off the dock, or put it on the dock, whatever the occasion would be.

"Q. In employing this kind of help they sign no papers, do they? A. No, sir. * * * No local boat signs any articles.

"Q. You say his duties were those of a deck hand? A. Yes.

"Q. What are the duties of a deck hand on a boat of this sort? A. Well, just general labor, keeping it clean, handling the lines, painting or whatever you ask him to do.

"Q. Do they have to have any experience when they come on there, any kind of experience as seamen or sailors? * * * A. No, sir.

"Q. They come on like laborers? A. Yes. They pick up the work as they work along there.

"Q. * * * Now, as a matter of fact, Schumann was called in only by telephone to come whenever there was work? A. Yes, sir.

"Q. Otherwise he was staying home waiting for a call to come to work? A. Yes, sir.

"Q. He was a plain laborer? A. Yes, sir. In other words, he was called a deck hand.

"Q. Now, he did not participate in any of the navigation of the boat, did he? A. No, sir.

"Q. Isn't it a fact that the man's main work consisted of coaling up the steamboat, when the boat came up it was his duty to coal up the steamboat? A. No, while discharging the coal his duty was to keep the coal running in these hoppers up on deck with a pole.

"Q. If there was no work he didn't have any claim on you, if there was no work he would not come and ask for work. Isn't that correct? A. Why, no.

"Q. He would only come when you called him? A. Why yes. Well, generally he knew when he went home at night whether to wait for a call or come out the next day.

"Q. There was no obligation on your part to give him work? A. No, sir."

The fireman of the Koal Kraft testified before the Commissioner:

"Q. Did you know John Schumann? A. Yes, sir.

Presented for determination is the line of demarcation between the duties of the deputy commissioner and those of the District Court. The generalization is accepted that the determination of "jurisdictional facts" is reserved to the courts while issues involving "circumstances, nature, extent and consequences of injuries" are for the commissioner. The court's review of the commissioner's action, through an injunction suit, is limited. As to these latter questions, the court is limited to an ascertainment of any supporting evidence, while questions involving "jurisdictional" controversies are determinable by the court in a trial *de novo*. This differentiation of jurisdiction is derived from our constitutional theory,—the Federal Congress may not impose a liability on an employer except by virtue of the existence and involvement of the two factors—(1) navigable waters, and (2) master and servant relationship. And the determination of the existence of these two jurisdictional prerequisites may not be left to the decision of an administrative tribunal, but must be lodged in a court. (*Crowell v. Benson, supra.*) Other issues may, however, be left to administrative determination, and such findings are conclusive if supported by evidence.*

"Q. What part of the crew was he? A. He was on the after deck, a deck hand on the after deck.

"Q. What were his duties? A. Well, his duties, his main duty was to poke down the coal from the hopper on to the belt when it stuck there. He also put the line on the winch, he stood there and gave me signals. When the boat was tied up he went up and pushed coal down.

"Q. * * did he do any work other than that occasionally? A. Well, he went down below and helped scrub the deck down there. * * Any painting that was necessary to be done on the boat was a part of his job. The deck hand maintained the outside of the boat and inside.

"Q. You say the deck hands have nothing to do with the steering or with the navigation of the boat? A. No, they don't.

"Q. And while the boat is in motion the deck hands really have nothing to do? A. Well, I would say the deck hand has nothing to do except when there is an emergency breakdown * *.

"Q. You said before that the main duty of John Schumann was to refuel this steamboat when your coal barge would come to it? That was his main duty? A. Yes.

"Q. Now, while he was working there he never slept there in the boat? A. No.

"Q. He stayed at home and was called whenever there was work? A. Yes.

"Q. That applied to all of you. A. Yes.

* * Commissioner's finding on issues other than jurisdictional are final if supported by evidence: *Del Vecchia v. Bowers*, 296 U. S. 280; *Voehl v. Indemnity Co.*, 288 U. S. 162; *Salmon Bay Sand & Gravel Co. v. Marshall*, 93 F. (2d) 1; *Wheeler Shipyard v. Loice*, 13 F. Supp. 863, *aff'd*. 82 F. (2d)

We conclude that the inquiry into the crew-membership status is not jurisdictional in character, and, therefore, is one for the commissioner to determine, and his determination if supported by the evidence may not be disturbed by the District Court.

The following reasons underlie our conclusion:

(1) The Supreme Court has held that *two* factors are jurisdictional (navigable waters, and employer-employee relation) because without their presence the Federal Government would have no power to act. The naming of the *two* jurisdictional prerequisites impliedly excludes the existence of others.

(2) Although being a "member of a crew" *excepts* one from the purview of the *coverage* section (Section 3, above-quoted) the Supreme Court has held that another exception from coverage, namely, suicide, is *not* a jurisdictional issue. These two statutory exceptions, namely, a "member of a crew" and a death by suicide, are of identical structure in the statutory set-up of this section, and a legal construction given to the latter (suicide) might with plausibility be given to the former. If one is not a jurisdictional question, should we not give a like effect or construction to the other?

(3) The statute should be construed liberally to protect laborers.***

1022; *Hoage v. Royal Indemnity Co.*, 90 F. (2d) 387, cer. den.; *Speaks v. Hoage*, 78 F. (2d) 208; cer. den. 296 U. S. 574; *Malone v. Hoage*, 73 F. (2d) 855; *Wood Towing Co. v. Parker*, 76 F. (2d) 770; *Emp. Liability Corp. v. Hoage*, 91 F. (2d) 318; *McNelly v. Sheppard*, 89 F. (2d) 956; *Taylor v. McManigal*, 89 F. (2d) 583; *W. J. McCahan Sugar Co. v. Norton*, 43 F. (2d) 505, cer. den. 282 U. S. 899; *Keycay Stevedoring Co. v. Clark*, 43 F. (2d) 983; *Bethlehem Shipbuilding Co. v. Monahan*, *Texas Employers Ins. Assn. v. Sheppard*, 62 F. (2d) 122; *Wilson & Co. v. Lock*, 50 F. (2d) 81; *Mich. Transit Corp. v. Brown*, 56 F. (2d) 200; *Ind. Pier Co. v. Norton*, 54 F. (2d) 734; *Wheeling Corrug. Co. v. McManigal*, 41 F. (2d) 593; *Todd Dry Docks v. Marshall*, 61 F. (2d) 671; *Lumber Mut. Cas. Co. v. Locke*, 60 F. (2d) 35; *Pacific Emp. Ins. Co. v. Pillsbury*, 61 F. (2d) 101; *Green v. Crowell*, 69 F. (2d) 762; *West Penn Sand Co. v. Norton*, 95 F. (2d) 498; *DiGiorgio Fruit Corp. v. Norton*, 93 F. (2d) 119, cer. den. 302 U. S. 767; *Fulton v. Hoage*, 77 F. (2d) 110; *N. W. Stevedoring v. Marshall*, 41 F. (2d) 28.

*** *The Longshoremen's Act should be liberally construed: Crowell v. Benson*, 285 U. S. 22; *West Penn Sand & Gravel Co. v. Norton*, 95 F. (2d) 498; *Candado Stevedoring Co.*, 85 F. (2d) 119; CCA 2 cer. den. 299 U. S. 588; *Rothschild & Co. v. Marshall*, 44 F. (2d) 546; 56 F. (2d) 415; *DeWalde v. H. & O. Co.*, 71 F. (2d) 810, CCA 4; cer. den. 293 U. S. 581; *Pac. Emp. Ins. Co. v. Pillsbury*, 61 F. (2d) 101; *Gen. Acc. Fire Corp. v. Crocell*, 76 F. (2d) 341; *Jarka Corp. v. Monahan*, 62 F. (2d) 212; *Eastern S. S. Lines v. Monahan*, 21 F. Supp. 535; *Bay Ridge Operating Co. v. Lowe*, 14 F. Supp. 280; *Fidelity & C. Co. v. Burris*, 59 F. (2d) 1042.

(4) The number of jurisdictional issues should not be increased beyond legal reason because the purpose of the Act was to expedite the hearing of claims and granting of awards and to simplify as greatly as possible the procedure in such matters, so that the needy, the helpless and the ignorant would receive financial aid promptly.**** The Act gives to the commissioner broad powers to accomplish this purpose.

There remains only the review of the deputy commissioner's finding that Schumann was not a member of a crew. The District Court found otherwise on a trial *de novo* on evidence similar to that heard by the commissioner.

The evidence, in our opinion, supports the commissioner's finding.†† The following facts are significant:

a) Schumann had no duties pertaining to the naviga-

**** *Crocell v. Benson*, 285 U. S. 22. "The object is to secure within the prescribed limits of the employer's liability an immediate investigation and a sound practical judgment, and the efficacy of the plan depends upon the finality of the determinations of fact with respect to the circumstances, nature, extent and consequences of the employee's injuries and the amount of compensation that should be awarded. * * To hold otherwise would be to defeat the obvious purpose of the legislation to furnish a prompt, continuous, expert and inexpensive method for dealing with a class of questions of fact which are peculiarly suited to examination and determination by an administrative agency specially assigned to that task."

†† CASES DISCUSSING THE NATURE OF THE DUTIES OF A MEMBER OF A CREW.

DeWald v. B. & O. R. Co., 71 F. (2d) 810, CCA 4, cer. den. 293 U. S. 581
Bargeman whose duties were to check and supervise loading and unloading of cargo and keeping record of loads, and who went home every night and who was sole worker on barges which were not navigated under their own power, held not member of crew so as to preclude recovery for his death; "crew" being a collective noun and signifying the ship's company.

He made lines fast, at dock and along side vessel.

He lived ashore and reported each day to see if needed.

Work averaged three days a week.

Barge operated only in harbor.

Not responsible for navigation, only incidental task of lines.

For certain purposes comes under category of seaman, but it doesn't follow he was a seaman in true sense—one who is engaged in voyages upon a ship or vessel and assists in the navigation of the vessel and is exposed to perils of sea, or, in other words, a seaman in the common acceptance of the term.

Significant Congress didn't use term "seaman."

The clause of the act excepting members of the crew, is one intended to restrict rather than extend and when we consider the purpose and history of the legislation as well as the nature of his duties and the use of the barges on which he was from time to time employed by the day, he was not a member of the crew.

tion of the vessel, except the incidental task of throwing the ship's line. His *primary* duty was to free the coal if it stuck in the hopper while being discharged into the fueled vessel, while both boats were at rest. He had no duties while the boat was in motion.

b) He was paid an hourly wage. He had no "Articles" (a naval term meaning employment contract) and none were necessary in this kind of work. He slept at home and boarded off ship. He was called very early in the morning each day as he was wanted. While he had worked only three weeks, and it might have been possible that he would have been retained for years to come, his employment was still more akin to temporary employment. The Captain testified that he was under no obligation to give him work each day—no contract of regular employment.

c) While we have given some weight to the fact that the Certificate of Inspection required the craft to have a

Warner v. Goltra, 293 U. S. 155, 158

"One can find a like range of variation in the use of the word 'crew.' It is sometimes used to comprehend the officers and common seaman, excluding the masters, and sometimes comprehending the common seamen only, excluding the master and officers."

Taylor v. McManigal, 89 F. (2d) 583 CCA

The deceased was killed while working as a mechanic. He had not assumed the duties of an assistant engineer. The most that can be said is that he with the other men working on the boat expected to become members of the crew when it was ready to sail. The commonly accepted meaning of the word "crew" is the whole company which mans a ship and aids in the navigation, or the ship's company.

Presumption is that in the absence of substantial evidence to the contrary the claim comes within the provision of the statute. The court held the preponderance was to the same effect. The court held deceased was fixing a boiler while ship was in dry dock and was not a member of the crew.

Seneca Washed Gravel Co. v. McManigal, 65 F. (2d) 779, CCA 2.

Night watchman on vessel in winter quarters held not member of crew. No part in navigation. Lived on shore. Never on boat when under way. Was watchman year around. Not shown in certificate of inspection that there was a night watchman in crew. Employment not for navigation purposes.

"The word 'crew' is used in the statute to connote a company of seamen belonging to the vessel, usually including the officers. It is the 'ship's company.' The crew is usually referred to and is naturally and primarily thought of as those who are on board and aiding in the navigation without reference to the nature of the arrangement under which they board."

Required no knowledge of shipping or navigation and could have been performed by anyone who had not been so instructed.

Union Oil Co. v. Pillsbury, 63 F. (2d) 925, CCA 9.

Third officer who was paid off and reengaged as night watchman while vessel was in dry dock held not member of crew because he was temporarily employed for the few days the ship was in dry dock (he occupied quarters on ship).

crew of five in addition to the master, and that in this instance five would be present only if Schumann were included, we are convinced that the word "crew" as used in the certificate has a different significance and connotation than the word "crew" as used in the statutory exception. The Longshoremen's Act contemplated the inclusion of that body of men who in the common parlance make up the ship's complement,—those who regularly or ordinarily are engaged in seafaring and navigation, not those whose tasks are of such a nature that they are independent of navigation in their scope, such as tasks which might as well have their background on shore, or at the dock (such as watchmen, etc.*****). The task of prodding coal down a runway might just as well have as its background a coal truck, a round house, or a mine, as a steamship. It was an ordinary laborer's job, and it was merely happenstance that the location of this position was on shipboard.

Even though the construction of this statute necessitated a different answer to the jurisdictional question, the result would be the same.

A District Court in reviewing the finding of the deputy commissioner, made in a proper case, is precluded from weighing the evidence. He may only inquire into the existence of any evidence to support a finding that the deceased was not a seaman. In such a case the District Court was required to examine the record and ascertain whether there was any evidence to support the commissioner's finding.

Likewise, on this review, assuming a trial *de novo* was proper and the seaman status presented a jurisdictional question, we must examine the evidence to ascertain whether there was any evidence to support the court's finding that he was a seaman.

In either case the facts are not in dispute. Therefore on undisputed evidence, is the finding, which we might call

***** Watchmen not within the Act. *Seneca Washed Gravel v. McManigal*, 65 F. (2d) 779, CCA 2; *Union Oil Co. v. Pillsbury*, 63 F. (2d) 925, CCA 9.

Cases wherein term "crew" under Longshoremen's Act is discussed. *DeWald v. B. & O. R. Co.*, 71 F. (2d) 810, CCA 4, cer. den. 293 U. S. 581; *Taylor v. McManigal*, 89 F. (2d) 583; *Seneca Washed Gravel Co. v. McManigal*, 65 F. (2d) 779, CCA 2; *Diomede v. Lowe*, 87 F. (2d) 296, CCA 2; *Lawson v. Md. Cas. Co.*, 94 F. (2d) 103; *Perry v. U. S. Emp. Comp. Com.*, 27 F. (2d) 144; *Union Oil Co. v. Pillsbury*, 63 F. (2d) 925; *Harper v. Parker*, 9 F. Supp. 744. See also *Warner v. Goltra*, 293 U. S. 155.

Decree Reversing.

a conclusion that the deceased was a seaman, consistent with the undisputed facts?

Convinced as we are that the evidence establishes a non-seaman status, it follows that the court erred in holding to the contrary.

The decree is reversed with directions to vacate the injunction and dismiss the bill.

Endorsed: Filed May 11, 1939. Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the eleventh day of May, 1939, the following further proceedings were had and entered of record, to-wit:

Thursday, May 11, 1939.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.

Hon. J. Earl Major, Circuit Judge.

Hon. Walter E. Treanor, Circuit Judge.

South Chicago Coal and Dock Company, an Illinois Corporation, and London Guarantee and Accident Company, Ltd.,

6808 · vs.

Harry W. Bassett, Deputy Commissioner of United States Employees Compensation Commission, Tenth Compensation District,

Plaintiff-Appellees,

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Defendant-Appellant.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On Consideration Whereof: It is now here ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby reversed; and that this cause be, and the same is hereby remanded to the said District Court with directions to vacate the injunction and dismiss the bill.

And afterwards, to-wit: On the twenty-sixth day of May, 1939, there was filed in the office of the Clerk of this Court, a Petition for a Rehearing, which said Petition for a Rehearing is in the words and figures following, to-wit:

No. 6808

In the
UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

South Chicago Coal & Dock Company, An Illinois Corporation
and

London Guarantee and Accident Company, Ltd.,

Plaintiffs-Appellees,
vs.

Harry W. Bassett, Deputy Commissioner of United States Employees' Compensation Commission, Tenth Compensation District,

Defendant-Appellant.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Honorable
Philip L. Sullivan,
District Judge.

PETITION FOR REHEARING.

Robert J. Folonie,
105 W. Adams Street,
Chicago, Illinois,
Counsel for Petitioners,
(Plaintiffs-Appellees).

Petition for Rehearing.

In the
UNITED STATES CIRCUIT COURT OF APPEALS.
For the Seventh Circuit.

No. 6808

South Chicago Coal & Dock Company, an Illinois Corporation and London Guarantee and Accident Company, Ltd.,

Plaintiffs-Appellees,
vs.

Harry W. Bassett, Deputy Commissioner of United States Employees' Compensation Commission, Tenth Compensation District,

Defendant-Appellant.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Honorable
Philip L. Sullivan,
District Judge.

PETITION FOR REHEARING.

Come now South Chicago Coal & Dock Company, an Illinois corporation, and London Guarantee and Accident Company, Ltd., plaintiffs-appellees, and respectfully pray that the above court may grant a rehearing herein and, upon the granting of such rehearing, may withdraw the opinion heretofore filed and vacate the order of reversal of decree and withdraw the order to vacate the injunction and vacate the order to dismiss the bill and, upon granting such rehearing, may affirm the judgment of the District Court; and petitioners, for cause and reason, present their argument hereinafter next appearing.

(The opinion filed is for convenience set forth in the appendix hereto.)

ARGUMENT.

I.

The court has overlooked an important and controlling section of the Statute.

The court has predicated its decision upon the premise that whether or not Schumann was a member of the crew of a vessel (*i. e.*, was not an employee as defined in the Act) is not a jurisdictional question. The court has discussed this problem as if it rested exclusively on *Section 3* of the Longshoremen's Act (33 U. S. C. A. § 903) (Op. p. 2).¹

The court has overlooked the fact that jurisdiction of persons under the Act is pursuant to definitions in *Section 2* of such Act (33 U. S. C. A. § 902). *Section 2* provides:

"The term 'employee' does not include a master or member of a crew of any vessel."

When, therefore, *Section 3* of the Act provides that compensation shall be payable for the "death of an employee," this language (read in the light of the definition in *Section 2*) necessarily means an employee who is not a master or member of a crew.

(*Section 2* was called to the attention of this court in Brief of Appellees, page 17.)

II.

The court has misconstrued and misapplied *Crowell v. Benson*, 285 U. S. 22.

The court having overlooked the controlling definition, in *Section 2*, which fixes jurisdiction of persons, has accordingly misconstrued the effect of the decision of the Supreme Court of the United States in *Crowell v. Benson*, 285 U. S. 22.

The opinion in the case at bar says (Op. p. 5):

"The Supreme Court has held that two factors are jurisdictional (navigable waters, and employer-employee relation) because without their presence the Federal Government would have no power to act. The naming of the two jurisdictional prerequisites impliedly excludes the existence of others."

We think the court has confused the discussion by the Supreme Court of the jurisdiction of Congress and the decision by the Supreme Court respecting jurisdiction of the deputy commissioner. The appellees here challenge the jurisdiction of the deputy commissioner and assert a trial *de novo* was properly to be had on the issue whether the deputy commissioner had jurisdiction—in other words, whether he was empowered to determine the controversy between the plaintiffs and the claimant.

The Supreme Court in *Crowell v. Benson*, 285 U. S. 22, decided that question (*i. e.*, the power to hear the matter *de novo* because the deputy commissioner had no jurisdiction under the statute) and said:

"The finality of such determinations of the deputy commissioner is predicated primarily upon the provision (§ 19 (a)) that he 'shall have full power and authority to hear and determine all questions in respect of such claim.' But 'such claim' is the claim for compensation under the Act and by its explicit provisions is that of an '*employee*,' *as defined in the Act*, against his '*employer*.'" (P. 62.) (Italics are ours.)

When this court says in its opinion that a jurisdictional fact is "*employer-employee relation*," this must necessarily mean, under the decision by the Supreme Court, not an issue whether or not the person in question is a general employee, but whether or not he is "*an employee as defined in the Act*." If he is a member of the crew, he is not an employee (*as defined in the Act*) because the statute says in Section 2 that "the term '*employee*' does not include a master or member of a crew of any vessel." It is not disputed in the case at bar that the "*Koal Kraft*" was a vessel, nor even disputed that she was a vessel of the United States. It is undisputed that Schumann was one of the "*crew*" of that vessel without whose presence the ship could not operate and therefore he was not an "*employee*" *as defined in the Act* (*i. e.*, a person other than a member of the crew).

III.

The analogies drawn in the court's opinion rest in error.

In the case at bar the court makes an analogy and says (Op. p. 5), that the asserted suicide of an employee (presumably one clearly within the Act) is not a jurisdictional

inquiry and may properly be compared with the inquiry here. The opinion herein says (p. 5) :

"These two statutory exceptions, namely, 'a member of a crew' and a death by suicide, are of identical structure in the statutory set-up of this section, and a legal construction given to the latter (suicide) might with plausibility be given to the former. If one is not a jurisdictional question, should we not give a like effect or construction to the other?"

We think the court is clearly in error in this analogy, because under the statute two questions are fundamental or jurisdictional. As is said by the Supreme Court in *Crowell v. Benson*, 285 U. S. 22, l. c. 62, the fundamental or jurisdictional facts are: (1) locality of the injury (maritime location, *i. e.*, shipboard); and (2) the relation of the employer to the one injured as, "*an employee as defined in the Act.*" The claimed suicide of one who was confessedly a longshoreman would be the death of a person who concededly was *within the Act* who (it was claimed) committed some action which barred his recovery. The situation would not be unlike a defense which might be made at common law on the ground of a release. This is not a situation having analogy to the defense against compensation that the person for whose death compensation is sought was *not an employee within the definitions of the Act.* The court has been led into error by overlooking the provisions of Section 2 of the Longshoremen's Act.

IV.

The court has fallen into error in its emphasis on the duties performed by deceased (said to be ordinary labor) as a matter of importance.

A deckhand employed as a member of a crew of a vessel sailing on the seas or between States is a laborer. Although he is a necessary member of the crew, he is essentially a laborer and the common worker among the crew. That the terms "deck hand" on a sea-going vessel and "ordinary worker" means the same thing in substance appears uncontradictedly in the record (Tr. p. 51 in the evidence of the master).

"Q. What are the duties of a *seaman* on a vessel, a *sea-going vessel*?

A. There are ordinary and first class seamen. He would be an *ordinary seaman*.

Petition for Rehearing.

Q. What are the duties of an ordinary seaman?

A. To do deck work.

Q. Will you elaborate on your statement of deck work?

A. Yes, sir.

Q. Tell the court just what you mean by deck work.

A. By deck work, a deck hand is a man that does ordinary work. He handles the line, does odd jobs, painting and cleaning up the boat, keeps the boat in shipshape.

Q. Does the sea-going vessel have laborers?

A. Yes, sir. They call them ordinary seamen.

Q. I mean, do they have laborers also?

A. No, sir."

This court in its opinion says:

"The task of prodding coal down a runway might just as well have as its background a coal truck, a round house, or a mine, as a steamship. It was an ordinary laborer's job, and it was merely happenstance that the location of this position was on shipboard" (Op. p. 8.)

We believe that the court has fallen into error in this line of reasoning and we think the following analysis may be of aid to the court in coming to correct conclusions:

John Schumann was a *deck hand* and was shipped as such.

Webster's New International Dictionary defines a "*hand*" as "one employed at manual labor; as a factory hand; a member of a crew."

A *factory hand* is a manual laborer in a factory, and he is just as much a factory hand if he does strictly manual labor as if he does work involving some degree of skill.

A *farm hand* is a laborer working on a farm.

A *stable hand* is a laborer working about a stable, caring for horses.

A *deck hand* is a laborer working on the deck of a ship.

The *factory hand* is confronted with the perils of being caught in moving machinery in the factory.

The *farm hand* is confronted with the peril of being kicked by a horse.

A *hand in a mine* is confronted with the danger of a wall of coal falling on him and injuring or killing him.

A *deck hand* is confronted with the danger of drowning.

A longshoreman working on a dock in prodding coal on the dock is confronted with the danger of falling off the dock or being struck by the coal, but he does not have the constant danger of drowning as the deck hand does.

Schumann did not subject himself to the dangers of being kicked by a horse as the stable hand might, nor the fall of the roof of a mine as the miner would, but he was confronted with the peril of *drowning*,—the peril which, in fact, produced his death. His situation, as one of the crew of a vessel, was distinguished from all the other kinds of “hands” mentioned by the court, in that his work was performed *on the deck of a vessel*.

The chief difference between risks of a fireman on a steamship and a fireman in the power house of a factory is, that the fireman on shipboard is subjected to the danger of collision or drowning; in almost every other particular he has the same perils as the fireman on shore.

When the court says “it was merely happenstance that the location of this position was on shipboard,” the court has expressed the exact distinction between a longshoreman and a member of the crew, namely that a longshoreman (within the Act) performs his duties on land, or on docks and only incidentally on shipboard, and a member of the crew (as excluded from the Act) principally performs his duties on shipboard. If their laboring work be identical in every other particular, it is the location where their work is performed that makes one come within the Act and excludes the other from its operation.

V.

The court has overlooked important parts of the Brief of Appellees and cases there cited.

We respectfully call the attention of the court to the fact that this court has omitted any mention or review of the case of *Maryland Casualty Company v. Lawson*, 94 Fed. Rep. (2d) 190, decided by the Circuit Court of Appeals of the Fifth Circuit.

(This case is not to be confused with the case of *Lawson v. Maryland Casualty Co.* at page 193 of the same volume.)

The case is reviewed by us at some length at pages 25-27 of the Brief of Appellees. In that case the Court of Appeals, in a case indistinguishable from the one at bar in principle, and virtually identical upon the facts held “*The nature of the work done is not determinative*. Engineers and cooks as well as sailors are included” (p. 192) (Italics are ours). This court has in its opinion held to the contrary.

In that case the laborer on the scow (which had no pro-

pulsive power) did no work in any way different from that done by Schumann in the case at bar (p. 193). The court holds that the question was one of jurisdiction and that "the Deputy Commissioner was without jurisdiction" because the *laborer* on the scow, *properly styled a deck hand*, was *not an "employee" within the Act* and therefore the commissioner had no jurisdiction and recovery of compensation under the Act was not permitted. (The opinion in the case at bar is to the contrary.)

We respectfully submit that the case cited, as we read it, *squarely conflicts* with the opinion filed by this court. We assume that this court would not have failed to note or mention that case except through oversight.

We also call attention to the fact that in the case cited (at page 192) the test is said to be, not whether the person injured or deceased was an *employee* in the general employ of the owner of the vessel, but the question is there stated: "Was Burrows an *employee within the Act*, so that the Deputy Commissioner had jurisdiction?" This is a question on which his fact findings are not conclusive. *Crowell v. Benson*, 285 U. S. 22, 24." (Italics are ours.)

The opinion in the case at bar fails to give effect to the important words italicized above.

The court will find that in the case cited there was no dispute that Burrows was an employee of the shipowner in its general employment, but the question presented was whether he was "an employee within the Act," it being shown that he worked for the employer on the scow and worked only "*during their daily shift of eight hours*" (p. 193).

We call attention to the fact that it is not specifically prescribed by the Longshoremen's Act that the person injured who is excluded from its provisions must be "a seaman" but the Act says "members of the crew." Certainly the Act does not contemplate that every person who is "a member of the crew" must be one skilled in navigating a ship, for firemen, engineers and cooks, as well as sailors, are "members of the crew." The persons exempted from the Longshoremen's Act, over whom jurisdiction is not taken are "members of the crew," whether they are laborers (ordinary seamen), cooks, firemen, stewards, etc.

In the *Maryland Casualty* case the principal work of the scow man was dumping a scow at sea and cleaning her. As here, he was a mere deck hand. The fact that he was a "deck hand" or doing "laboring work" as part of his work as a member of the crew, does not affect his

status as a "member of the crew." If the opinion in the case at bar were to stand, it would require the conclusion (we think an erroneous conclusion) that a *fireman* on a vessel is not a member of the crew because he shovels coal, which he would also do if he were employed on land. The *engineer* is not a member of the crew because he operates an engine and his duties in running it are not different from those of an engineer running a stationary engine on shore.

The court has fallen into error in making the test that of *skill in seamanship*, which is not the test by which to determine whether one is a member of a crew.

We think the court has also failed to note the leading case decided by the Supreme Court of the United States (Appellees' Brief, p. 29) reported as *Ellis v. United States*, 206 U. S. 246, in which dredge hands were held to be seamen, and the fact that they operated a dredge for digging out a channel and did not participate in sailing a vessel was held to be of no importance. The important fact, as stated by the court in that case, was that the *work was performed on shipboard*, and the nature of the work there done was not controlling in determining whether they were seamen.

The court said:

"Whatever the nature of their work, it is incident to their employment on the dredges and scows, as in the case of an engineer or *coal shoveler* on board ship." (p. 260.) (Italics are ours.)

They were therefore held to be seamen and not longshoremen because they were "called upon for more or less of the *services required of ordinary seamen*." (p. 260.) (Italics are ours.)

We believe that the Supreme Court of the United States in the case so cited to this court has determined the matter to the contrary of this court's present opinion and this court has evidently overlooked the pertinency of that case.

VI.

The court's conclusion that the Act is to be liberally construed as to coverage is a misapprehension.

We think the court has also fallen into error in its conclusion that the "Longshoremen's Act should be liberally construed" (Op. p. 5). We believe that the cases cited by the court to this point are authority only for the statement that *when the statute is found to attach* and juris-

Petition for Rehearing.

diction for its application to exist, then it should be liberally construed to protect those whom it was designed to protect, namely, longshoremen. There is no question of liberal or strict construction to be applied in determining whether a person is within or without the Act, because that is a preliminary question which must be decided in ascertaining whether the Act applies at all. The statute does not permit of construction because it expressly provides that the employees who shall be subject to and entitled to the benefits and the detriments incident to the application of the Act shall be employees who are not members of the crew. As Schumann was without any dispute a member of the crew of the vessel, (regardless of his experience or lack of it as a sailor or seaman), compensation for his death is not within the scope of the Act, and the court has erred in holding to the contrary.

Upon all the foregoing considerations, we respectfully petition the court to grant a rehearing and upon the granting of such a rehearing, request that the court set aside its order of reversal and directions for dismissal of the bill, and affirm the judgment of the District Court.

Respectfully submitted,

Robert J. Folonie,

*Counsel for Petitioners,
(Plaintiffs-Appellees).*

Endorsed: Filed May 26, 1939. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the fifth day of June, 1939, there was filed in the office of the Clerk of this Court, an Answer to Petition for Rehearing, which said Answer is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

No. 6808.

South Chicago Coal & Dock Company, an Illinois Corporation, and London Guarantee and Accident Company, Ltd.,

Plaintiffs-Appellees,

vs.

Harry W. Bassett, Deputy Commissioner, United States Employees' Compensation Commission, Tenth Compensation District,

Defendant-Appellant.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

ANSWER TO PETITION FOR REHEARING.

William J. Campbell,
United States Attorney,
David H. Neuman,
Assistant United States Attorney,
Attorneys for Appellant.

Z. Lewis Dalby,
Chief Counsel, United States
Employees' Compensation Commission.

Chas. T. Branham,
Associate Counsel, United States
Employees' Compensation Commission.
Of Counsel.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

No. 6808.

South Chicago Coal & Dock Company, an Illinois Corporation, and London Guarantee and Accident Company, Ltd.,

Plaintiffs-Appellees,

vs.

Harry W. Bassett, Deputy Commissioner, United States Employees' Compensation Commission, Tenth Compensation District,

Defendant-Appellant.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

ANSWER TO PETITION FOR REHEARING.

Now comes the appellant, Harry W. Bassett, Deputy Commissioner United States Employees' Compensation Commission, Tenth Compensation District, and respectfully prays that appellees' petition for rehearing be denied on the ground that appellees have failed to set forth any valid reasons for the granting of such relief.

I.

Under Point I of said petition counsel for appellees contends that this Court erred in holding that Schumann was not a "member of a crew" within the meaning of Section 3 (a) (1) of the Longshoremen's Act in that the Court "overlooked the fact that jurisdiction of persons under the Act is pursuant to definitions in Section 2 of such Act." It is submitted that the argu-

ment on this point is entirely frivolous. Under both the definitions in section 2 and under the coverage provisions of section 3 a "member of a crew of any vessel" is excluded from the Act. This Court properly held that, under the decision of the Supreme Court in *Crowell v. Benson*, 285 U. S. 22, any question with respect thereto was not fundamental or jurisdictional, and the mere fact that the Court in its opinion referred to certain coverage provisions of section 3 and not to the definitions in section 2 is of no importance. In fact, the Supreme Court predicated its opinion in the *Benson* case principally upon the coverage provisions of section 3 (See pages 37 and 38, note 1, and pages 47 and 55, note 1, of opinion in *Benson* case).

The relationship of employer and employee may exist notwithstanding that the employee is a "member of a crew," and it is only when there is an issue relating to the employer-employee relationship that the District Court is authorized to grant a trial *de novo*. The status of an employee as a "member of a crew" does not involve a question as to whether the relationship of *employer and employee* exists within the meaning of the opinion of the Supreme Court in the *Benson* case. The decision in the *Benson* case is not predicated upon the statutory definition of the term "employee" in section 2 (3), as counsel for appellees would apparently have this Court believe. As to the status of the employee, the opinion of the Supreme Court in the *Benson* case is predicated upon the proposition that a question or issue relating to the "*fact of employment*" is jurisdictional and authorizes the District Court to grant a trial *de novo*.

II.

Under Point II, page 3 of the petition, counsel for appellees contends that "The Court having overlooked the controlling definition, in section 2, which fixes jurisdiction of persons, has accordingly misconstrued the effect of the decision of the Supreme Court of the United States in *Crowell v. Benson*, 285 U. S. 22." The coverage provision of section 3 also "fixes jurisdiction of persons." The quotation from the *Benson* case on pages 3 and 4 of the petition is not complete. Following the last word "employer" therein the statement is made that "The *fact of employment* is an essential condition precedent to the right to make the claim," which shows

clearly that what the Supreme Court had in mind with respect to trial *de novo* or jurisdictional questions was the issue relating to the "fact of employment." No such issue was raised in the present case. There can be no question but that Schumann was in the *general employ* of the South Chicago Coal and Dock Company at the time of his death. Whether the employee was a "member of a crew" of the vessel on which he was working does not involve any question *as to the fact of employment*. In fact, it was conceded by appellees in their bill that the relationship of employer and employee existed between Schumann and the South Chicago Coal and Dock Company at the time of Schumann's death (R. 3). This Court therefore properly held on the basis of the decision in *Crowell v. Benson* that the District Court erred in granting the trial *de novo*.

III.

Under Point III, pages 4 and 5 of the petition, counsel for appellees finds fault with the very pertinent and logical observation of this Court in its opinion of May 11, 1939, as follows:

"Although being a 'member of a crew' *excepts* one from the purview of the *coverage* section (Section 3, above quoted) the Supreme Court has held that another exception from coverage, namely, suicide, is *not* a jurisdictional issue. These two statutory exceptions, namely, a 'member of a crew' and a death by suicide, are of identical structure in the statutory set-up of this section, and a legal construction given to the latter (suicide) might with plausibility be given to the former. If one is not a jurisdictional question, should we not give a like effect or construction to the other?"

It is stated on page 5 of the petition that in *Crowell v. Benson* the two questions regarded as fundamental or jurisdictional are "(1) locality of the injury (maritime location, i. e., shipboard); and (2) the relation of the employer to the one injured as, 'an employee as defined in the Act'." It is submitted that this construction of the opinion of the Supreme Court in the *Benson* case is erroneous. With respect to the questions upon which a District Court may grant a trial *de novo*, the Supreme Court in the *Benson* case at pages 54 and 55 of its opinion specifically stated that "These fundamental

requirements are that the injury *occur upon the navigable waters* of the United States and that *relation of master and servant exist*. These conditions are indispensable to the application of the statute, not only because the Congress has so provided explicitly (sec. 3), but also because the power of the Congress to enact the legislation turns upon the existence of these conditions." In the present case neither of these issues was involved.

IV.

Under Point IV of the petition the argument is made that Schumann's "situation, as one of the crew of a vessel, was distinguished from all the other kinds of 'hands' mentioned by the court, in that his work was performed *on the deck of a vessel.*" This argument is so unconvincing that it appears to require no answer. No one can say that Schumann's duties were not those of an ordinary laborer, and the observation of the Court with respect thereto was germane and pertinent. Clearly there is no basis in the argument on this point for a rehearing.

V.

Under Point V, page 8 of the petition, it is contended that "this court has omitted any mention or review of the case of *Maryland Casualty Company v. Lawson*, 94 Fed. Rep. (2d) 190, decided by the Circuit Court of Appeals for the Fifth Circuit." It is submitted that the mere fact that the Court did not cite this case in its opinion is no basis for the contention that the court overlooked the case. The presumption is that the court considered all of the cases cited in the briefs of the respective parties.

The case of *Moore Drydock Company v. Pillsbury, Deputy Commissioner*, 100 Fed. (2d) 245, was reviewed at length on pages 15 to 18 of appellant's brief, but it was not mentioned by the court in its opinion. We do not contend, nor do we believe, however, that this Court failed to give careful consideration to that case as well.

The distinguishing features of the case of *Maryland Casualty Co. v. Lawson*, 94 Fed. (2d) 190, relied upon by appellees, were pointed out on pages 3 and 4 of appellant's reply brief, to which the attention of the Court is invited.

VI.

Under Point VI of the petition, it is contended that the Court's conclusion that the Act is to be liberally construed as to coverage is a misapprehension. The rule of liberality of construction is so universally recognized and applied in compensation cases, as is indicated by the numerous authorities cited on this point in the Court's opinion, that no answer to appellees' argument on this point appears to be necessary, except that it should be stated that in applying the rule of liberality of construction, the courts have made no distinction between cases involving jurisdictional and non-jurisdictional questions, as will be seen from an examination of the cases cited on this point by the Court.

For the foregoing reasons, it is respectfully submitted that appellees have failed to show any error by this Honorable Court in its opinion of May 11, 1939, and that the petition for rehearing should be denied.

Respectfully submitted,

William J. Campbell,
United States Attorney,

David H. Neuman,
Assistant United States Attorney,
Attorneys for Appellant.

Z. Lewis Dalby,
Chief Counsel, United States
Employees' Compensation Commission.

Chas. T. Branham,
Associate Counsel, United States
Employees' Compensation Commission.
Of Counsel.

Endorsed: Filed June 5, 1939. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the sixth day of June, 1939, the following further proceedings were had and entered of record, to-wit:

Tuesday, June 6, 1939.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.

Hon. J. Earl Major, Circuit Judge.

Hon. Walter E. Treanor, Circuit Judge.

South Chicago Coal and Dock Company, *et al.*,

Plaintiffs-Appellees,

6808

vs.

Harry W. Bassett, Deputy Commissioner, etc.

Defendant-Appellant.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered by the Court that the Petition for a Rehearing of this cause be, and the same is hereby denied.

And afterwards, to-wit: On the seventh day of June, 1939, there was filed in the office of the Clerk of this Court, a Motion to Stay Mandate, which said Motion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

South Chicago Coal & Dock Company, an Illinois corporation, and London Guarantee and Accident Company, Ltd.,

Plaintiffs-Appellees,

vs.

Harry W. Bassett, Deputy Commissioner of the United States Employees' Compensation Commission, Tenth Compensation District,

Defendant-Appellant.

Number 6808.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

MOTION.

Now comes South Chicago Coal & Dock Company, an Illinois Corporation, and London Guarantee and Accident Company, Ltd., plaintiffs-appellees, and show to this court that they have heretofore filed with the Clerk of this court their petition in support of this their motion for a stay of the issuance of the mandate of this court in this cause.

Wherefore, these said plaintiffs-appellees pray that the mandate of this court be stayed and withheld pending the application for and the obtaining of a writ of certiorari from the Supreme Court of the United States, provided said application is made within the time fixed by law.

Robert J. Folonie,
Attorney for Plaintiffs-Appellees.

Dated 7th day of June, 1939.

Endorsed: Filed June 7, 1939. Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the seventh day of June, 1939, there was filed in the office of the Clerk of this Court, a Petition to Stay Mandate, which said Petition is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

South Chicago Coal & Dock Company, an Illinois corporation, and London Guarantee and Accident Company, Ltd.,

Plaintiffs-Appellees,
vs.

Harry W. Bassett, Deputy Commissioner of the United States Employees' Compensation Commission, Tenth Compensation District,

Defendant-Appellant.

Number 6808.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

PETITION.

Now comes South Chicago Coal & Dock Company, an Illinois corporation, and London Guarantee and Accident Company, Ltd., plaintiffs-appellees, and present this their petition that the mandate of this court be stayed and withheld pending application for and obtaining of a writ of certiorari from the Supreme Court of the United States, and in support of said petition show that an opinion was filed in this cause on May 11, 1939 reversing the decree of the District Court with directions to vacate the injunction and dismiss the bill therein filed by these plaintiffs; that a petition for rehearing was filed by these plaintiffs-appellees on the 26th day of May, 1939; and that an order was entered by this court on the 6th day of June, 1939, denying said petition for rehearing; that the mandate of this court will be issued forthwith unless otherwise ordered by this court; that these plaintiffs-appellees, in good faith, intend to and will within the time prescribed by law present a petition and brief to the Supreme Court of the United States, praying that a writ of certiorari be issued therefrom to this court, and that these plaintiffs-appellees believe that they have reasonable and sufficient grounds for the application and obtaining of said writ of certiorari.

Wherefore, the petitioners pray that the issuance of the mandate of this court in this cause be stayed and withheld pending the application for and obtaining of a

Order Staying Mandate.

writ of certiorari from the Supreme Court of the United States and until determination of said cause by the Supreme Court, provided said application is made within the time prescribed by law.

Respectfully submitted,

Robert J. Folonie,
Attorney for Petitioners (Plaintiffs-Appellees).

Endorsed: Filed June 7, 1939. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the tenth day of June, 1939, the following further proceedings were had and entered of record, to-wit:

June 10, 1939.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.

South Chicago Coal and Dock Company, et al.,
Plaintiffs-Appellees,
6808 vs.
Harry W. Bassett, Deputy Commissioner, etc.
Defendant-Appellant.

}Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

On motion and petition of counsel for appellees, It is ordered that the Mandate in this cause be, and it is hereby stayed until the further order of this Court, and that counsel for appellees promptly file a petition for a writ of certiorari in the Supreme Court of the United States, and forthwith file proof of the filing of said petition in this Court.

And afterwards, to-wit: On the eleventh day of July, 1939, there was filed in the office of the Clerk of this Court, a Notice and Proof of Service, which said Notice and Proof of Service is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

South Chicago Coal & Dock Company, an Illinois corporation, and London Guarantee and Accident Company, Ltd.,

Plaintiffs-Appellees,

vs.

Harry W. Bassett, Deputy Commissioner of the United States Employees' Compensation Commission, Tenth Compensation District,

Defendant-Appellant.

Number 6808.

NOTICE AND PROOF OF SERVICE.

To: William J. Campbell, United States Attorney,
Attorney for Defendant-Appellant:

Please Take Notice that the South Chicago Coal & Dock Company, an Illinois corporation, and London Guarantee and Accident Company, Ltd., plaintiffs-appellees in the above cause will this 11th day of July, 1939, file in the office of the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, an assignment of errors or statement of points upon which they intend to rely on petition for and hearing on certiorari. A copy of the said assignment of errors or statement of points is herewith served upon you.

Robert J. Folonie,
Counsel for Plaintiffs-Appellees.

Received a copy of the above and foregoing Notice together with a copy of the assignment of errors or statement of points therein mentioned, this 11th day of July, 1939.

William J. Campbell P.J.
Attorney for Defendant-Appellant.

Endorsed: Filed July 11, 1939. Frederick G. Campbell,
Clerk.

And on the same day, to-wit: On the eleventh day of July, 1939, there was filed in the office of the Clerk of this Court, Assignment of Errors, etc., which said Assignment of Errors, etc., are in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

South Chicago Coal & Dock Company, an Illinois corporation, and London Guarantee and Accident Company, Ltd.,

Plaintiffs-Appellees,

vs.

Harry W. Bassett, Deputy Commissioner of the United States Employees' Compensation Commission, Tenth Compensation District,

Defendant-Appellant.

} Number 6808.

ASSIGNMENT OF ERRORS OR STATEMENT OF POINTS UPON WHICH PLAINTIFFS-APPELLEES INTEND TO RELY.

The plaintiffs-appellees assign the following errors in the record and proceedings in this case and will rely on the following points on petition for and hearing on certiorari:

1. The said Circuit Court of Appeals erred in reversing the decree of the District Court.
2. The said Circuit Court of Appeals erred in not affirming the decree of the District Court.
3. The said Circuit Court of Appeals erred in directing the dismissal of the bill for injunction filed by these plaintiffs-appellees.
4. The said Circuit Court of Appeals erred in holding that the Deputy Commissioner had jurisdiction to make an award for the death of John Schumann.
5. The said Circuit Court of Appeals erred in holding that John Schumann was not a member of the crew of the "Koalkraft."
6. The said Circuit Court of Appeals erred in hold-

ing that the District Court was not entitled to hear the case *de novo*.

7. The said Circuit Court of Appeals erred in sustaining the contentions of the defendant-appellant respecting trial *de novo* in the District Court when no objection to such trial *de novo* was made therein.

8. The said Circuit Court of Appeals erred in holding that the crew-membership status of John Schumann was not jurisdictional in character.

9. The said Circuit Court of Appeals erred in holding that the crew-membership status of John Schumann was not a question of employer-employee relationship and therefore jurisdictional.

10. The said Circuit Court of Appeals erred in holding that the disputed question whether the deceased was a member of the crew, (even though he was in the general employment of the employer but was excluded, if a member of the crew, from those employees within the coverage of the Act as defined in paragraph 2 of the Longshoremen's and Harbor Workers' Compensation Act,) did not present a jurisdictional question of employer-employee relationship to be determined by the District Court.

Wherefore, on account of the errors hereinbefore set forth, plaintiffs-appellees will present their petition asking that a writ of certiorari issue from the Supreme Court of the United States to the said Circuit Court of Appeals, and upon the hearing of this cause before the Supreme Court of the United States will pray that the order of the United States Circuit Court of Appeals for the Seventh Circuit be reversed and the decree of the District Court of the United States for the Northern District of Illinois, Eastern Division, be affirmed.

Robert J. Folonie,
Counsel for Plaintiffs-Appellees.

Endorsed: Filed July 11, 1939. Frederick G. Campbell, Clerk.

MICRO CARD 22

TRADE

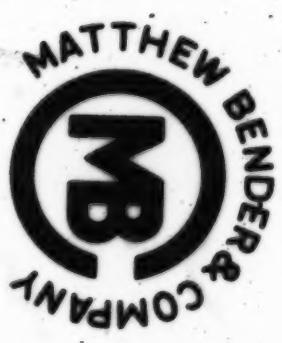
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UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages numbered from 81 to 115, inclusive, contain a true copy of the proceedings had and papers filed, (excepting stipulation as to printing Exhibit 1, and certified copy of Exhibit 1, which said stipulation and exhibit are reproduced in the printed record of this cause, certified herewith under a separate certificate, briefs of counsel, stipulation and order as to withdrawal of appellees brief, stipulation and order extending time for reply brief), in the case of

South Chicago Coal & Dock Company, an Illinois Corporation, and London Guarantee and Accident Company, Ltd.,

Plaintiffs-Appellees,

vs.

Harry W. Bassett, Deputy Commissioner of United States Employees Compensation Commission, Tenth Compensation District,

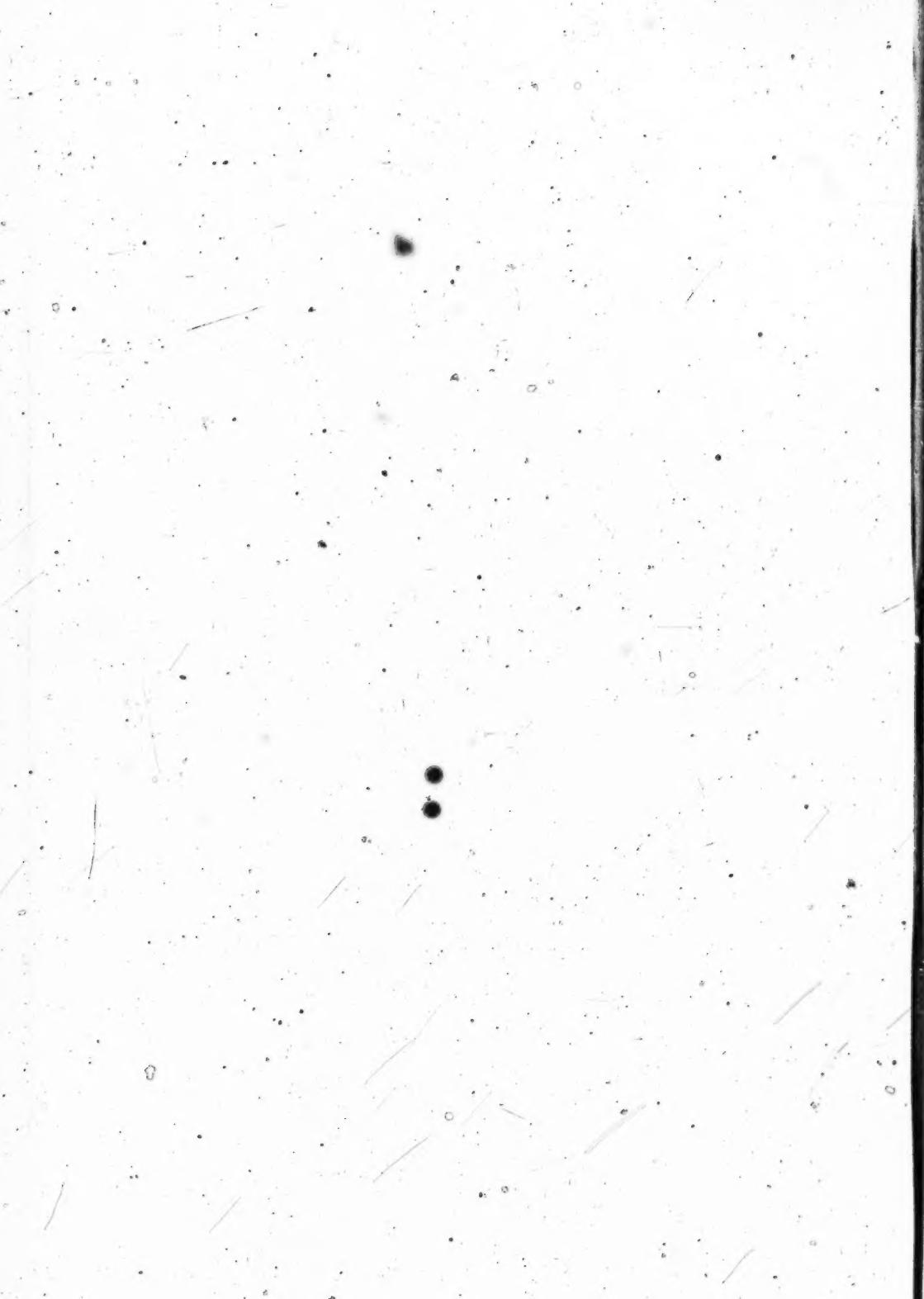
Defendant-Appellant,

No. 6808, October Term, 1938, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of aid United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 17th day of July A. D. 1939.

(Seal)

Frederick G. Campbell,
Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit,



SUPREME COURT OF THE UNITED STATES**ORDER ALLOWING CERTIORARI—Filed October 9, 1939**

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Butler took no part in the consideration and decision of this application.

(5174)